

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ROBERT H. NOE AND DAN L. BARNETT	)	
D/B/A B & D RENTALS	)	
	)	
COMPLAINANT	)	
	)	
V.	)	CASE NO. 2005-00423
	)	
KENTUCKY UTILITIES COMPANY	)	
	)	
DEFENDANT	)	

O R D E R

On November 10, 2005, through counsel, Robert H. Noe and Dan L. Barnett d/b/a B & D Rentals ("Complainant") filed with the Commission a formal complaint against Kentucky Utilities Company ("KU"). The complaint alleged that KU was improperly holding Complainant liable for meter tampering and diversion of service that occurred at rental property it owns at 16 Pleasant View Drive, Lancaster, Kentucky. Complainant requests that the Commission order the refund of the meter tampering and diversion of service charges. Complainant also requests that the Commission find that the tariff provision titled "Protection of Company Property" on Original Sheet 82.1 of KU's tariff be found void as against public policy.

In its answer, KU argues that because there was no active account at 16 Pleasant View Drive at the time the alleged meter tampering and diversion of service occurred, it properly billed Complainant for the meter tampering and theft of service

pursuant to Original Sheet 82.1 of its tariff. Original Sheet 82.1 states in pertinent part that, "[u]pon the absence of an active account, the property owner assumes responsibility for any consumption and the Company's property and service."

The parties have now entered into a Joint Stipulation and Settlement Agreement<sup>1</sup> and have submitted the agreement to the Commission for approval.

#### BACKGROUND

Service at 16 Pleasant View Drive was disconnected on June 20, 2005 due to the tenants' nonpayment. On June 27, 2005, KU read the meter again and observed no diversion of service or meter tampering. On September 30, 2005, a prospective tenant contacted KU and asked that service at the address be connected in his name. On the same day, a KU technician arrived at the address to connect service and discovered that the electric service had been connected illegally and that the meter had been damaged. The KU technician disconnected the service, removed the meter, and sealed the meter base.

Pursuant to Original Sheet No. 82.1 of its tariff, KU assessed Complainant charges for diversion of service. This complaint followed.

At the suggestion of Commission Staff, the parties, with the approval of the Attorney General,<sup>2</sup> have submitted a Joint Stipulation and Settlement Agreement for Commission approval. The agreement provides in pertinent part that:

1. The parties agree that the application of KU's tariff provision Original Sheet 82.1 may cause an unjust and unreasonable result.

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<sup>1</sup> A copy is attached hereto as Appendix A.

<sup>2</sup> The Attorney General was granted intervention pursuant to KRS 367.150(8).

2. KU agrees to refund the charges.
3. KU agrees to request approval of certain changes to the "Protection of Company's Property" sections of the Terms and Conditions contained in its tariff at Original Sheet 82.1.
4. Complainant requests that that Commission dismiss its complaint against KU.
5. The Attorney General agrees to recommend that the case be dismissed by the Commission as settled, and that the revised tariff be approved.

#### DISCUSSION

On its face the Joint Stipulation and Agreement appears reasonable. It is generally preferable when parties reach a resolution without expending the Commission's administrative resources by resorting to litigation. Because the parties have reached a settlement, the Commission finds that the Joint Stipulation and Agreement should be accepted and approved. However, nothing in the Commission's actions in this case shall be construed as an approval or rejection of KU's proposed tariff revisions, which will be addressed by the Commission in other proceedings.

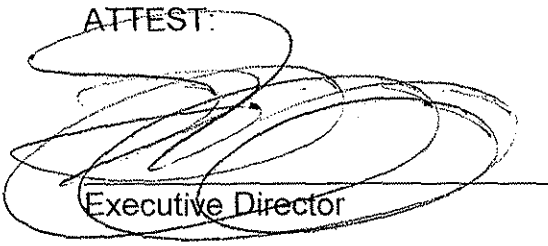
IT IS THEREFORE ORDERED that:

1. The Joint Stipulation and Agreement is accepted and approved.
2. This complaint is dismissed with prejudice and is removed from the Commission's docket.

Done at Frankfort, Kentucky, this 28th day of September, 2006.

By the Commission

ATTEST:



Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2005-00423 DATED September 28, 2006.

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

**ROBERT H. NOE AND DAN L. BARNETT,  
D/B/A B & D RENTALS**

**COMPLAINANT**

**v.**

**KENTUCKY UTILITIES COMPANY**

**DEFENDANT**

**CASE NO. 2005-00423**

**JOINT STIPULATION AND AGREEMENT**

**WHEREAS**, Kentucky Utilities Company ("KU") is a public utility subject to jurisdiction of the Kentucky Public Service Commission ("Commission") pursuant to KRS Chapter 278;

**WHEREAS**, on October 10, 2005, Robert H. Noe and Dan L. Barnett, d/b/a B & D Rentals ("B & D") filed a formal complaint with the Commission alleging that they should not be responsible for the charges associated with alleged meter tampering which occurred on their property;

**WHEREAS**, on November 9, 2005, B & D filed an amended complaint with the Commission;

**WHEREAS**, on November 18, 2005, the Commission entered an Order initiating Case No. 2005-00423, styled *In the Matter of: Robert H. Noe and Dan L. Barnett, d/b/a B & D*

*Rentals*, and ordering KU to satisfy the matters complained of or file a written answer to the Complaint;

**WHEREAS**, on October 25, 2005, KU, the AG, and others, in conjunction with the Commission Staff, participated in an informal conference at the offices of the Commission in which meter tampering and relevant KU's tariff provisions were discussed; and,

**WHEREAS**, KU and B & D (the "Parties") wish to facilitate the disposition of this proceeding through the submission of a Joint Stipulation and Agreement; and,

**NOW THEREFORE**, pursuant to 807 KAR 5:001, Section 4(6), the Parties hereby stipulate and agree as follows:

(1) The Parties agree that the application of KU's tariff, which became effective on July 1, 2004 and requires KU to hold the property owner responsible for any consumption and the Company's property and service in the absence of an active account, may cause an unjust or unreasonable result in certain circumstances. In an effort to resolve this Complaint, and subject to the Commission's approval, KU agrees to refund all the charges associated with meter tampering from B & D during the time period at issue, and to request approval of certain changes to the "Protection of Company's Property" sections of the Terms and Conditions contained in its tariff at Original Sheet No. 82.1. A copy of the revised tariff is attached hereto as Exhibit A. In exchange, B & D agrees to ask the Commission to dismiss their Complaint against KU.

(2) This Joint Stipulation and Agreement is subject to the acceptance of and approval by the Commission. Following the execution of this Joint Stipulation and Agreement, the Parties shall file it with the Commission and shall act in good faith and use their best efforts to recommend to the Commission that this Joint Stipulation and Agreement be accepted and approved.

(3) If the Commission does not accept and approve this Joint Stipulation and Agreement in its entirety, then: (a) this Joint Stipulation and Agreement shall be null, void and withdrawn by the Parties hereto from further consideration by the Commission and none of the Parties shall be bound by any of the provisions herein; and (b) this proceeding shall go forward and neither the terms of this Joint Stipulation and Agreement nor any matters raised during the settlement negotiations shall be binding on any of the Parties to this Joint Stipulation and Agreement or be construed against any of the signatories.

(4) This Joint Stipulation and Agreement reflects a compromise resolution of a contested matter. Nothing contained herein shall be construed as an admission of a violation of any federal or state statute or regulation, or of any provision of KU's tariffs; nor shall the Commission's acceptance of this Joint Stipulation and Agreement be construed as a finding of a violation of any statute or regulation, or of any provision of KU's tariffs.

**IN WITNESS WHEREOF**, the parties hereto have hereunto affixed their signatures this

19 day of December, 2005.

Kentucky Utilities Company

By: 

Robert H. Noe and Dan L. Barnett, d/b/a B & D Rentals

By: 

Robert R. Baker  
Rankin & Baker  
P.O. Box 225  
Stanford, Kentucky 40484



# Kentucky Utilities Company

First Revision of Original Sheet No. 82.1  
P.S.C. No. 13

## TERMS AND CONDITIONS Customer Responsibilities

installed and maintained in conformity with applicable statutes, laws or ordinances and with the rules and regulations of the constituted authorities having jurisdiction. The customer shall not install wiring or connect and use any motor or other electricity-using device which in the opinion of the Company is detrimental to its electric system or to the service of other customers of the Company. The Company assumes no responsibility whatsoever for the condition of the customer's electrical wiring, apparatus, or appliances, nor for the maintenance or removal of any portion thereof.

### OWNER'S CONSENT TO OCCUPY

The Customer shall grant easements and rights-of-way on and across Customer's property at no cost to the Company.

### ACCESS TO PREMISES AND EQUIPMENT

The Company shall have the right of access to the customer's premises at all reasonable times for the purpose of installing, meter reading, inspecting, repairing, or removing its equipment used in connection with its supply of electric service or for the purpose of turning on and shutting off the supply of electricity when necessary and for all other proper purposes. The customer shall not construct or permit the construction of any structure or device which will restrict the access of the Company to its equipment for any of the above purposes.

### PROTECTION OF COMPANY'S PROPERTY

Customers will be held responsible for tampering, interfering, or breaking of seals on meters, or other Company equipment installed on the Customer's premises, and will be held liable for same according to law. The Customer hereby agrees that no one except the employees of the Company shall be allowed to make any internal or external adjustments of any meter or any other piece of apparatus which shall be the property of the Company.

Upon the absence of an active account should tampering, interfering, or breaking of seals on meters or other Company equipment occur, the Company shall notify the property owner of such. The property owner shall have seven (7) business days from the date of notification to take corrective action acceptable to the Company in its sole discretion and, if applicable, have the responsible party apply for service with the Company and/or reimburse the Company for all costs associated with the incident. This action shall relieve the landlord from financial responsibility resulting from such tampering. If notification is made via a letter sent by regular mail, notification shall be deemed to have been made three (3) days after the date such letter is mailed. Should the property owner fail to take these corrective measures within seven (7) business days after notification, the property owner will assume financial responsibility for such tampering.

### POWER FACTOR

The Company installs facilities to supply power to the Customer at or near unity power factor.

The Company expects Customer to use apparatus which shall result in a power factor near unity. However, the Company will permit the use of apparatus which shall result, during normal operation, in a power factor not lower than 90 percent either lagging or leading.

Date of Issue: October 25, 2005  
Canceling Original Sheet No. 82.1  
Issued July 20, 2004

Issued By

Date Effective: November 24, 2005

John R. McCall, Executive Vice President,  
General Counsel, and Corporate Secretary  
Lexington, Kentucky

EXHIBIT A

**TERMS AND CONDITIONS**

**Customer Responsibilities**

Where the Customer's power factor is less than 90 percent, the Company reserves the right to require the Customer to furnish, at his own expense, suitable corrective equipment to maintain a power factor of 90 percent or higher.

**EXCLUSIVE SERVICE ON INSTALLATION CONNECTED**

Electric service shall not be used for purposes other than as set forth in customer's application or contract.

Except in cases where the Customer has a contract with the Company for reserve or auxiliary service, no other electric light or power service will be used by the Customer on the same installation in conjunction with the Company's service, either by means of a throw-over switch or any other connection.

**LIABILITY**

The Customer assumes all responsibility for the electric service upon the Customer's premises at and from the point of delivery of electricity and for the wires and equipment used in connection therewith, and will protect and save the Company harmless from all claims for injury or damage to persons or property occurring on the Customer's premises or at and from the point of delivery of electricity, occasioned by such electricity or said wires and equipment, except where said injury or damage will be shown to have been occasioned solely by the negligence of the Company

**NOTICE TO COMPANY OF CHANGES IN CUSTOMER'S LOAD**

The service connections, transformers, meters, and appurtenances supplied by Company for the rendition of electric service to its customers have a definite capacity which may not be exceeded without damage. In the event that the customer contemplates any material increase in his connected load, whether in a single increment or over an extended period, he shall immediately give the Company written notice of this fact so as to enable it to enlarge the capacity of such equipment. In case of failure to give such notice the customer may be held liable for any damage done to meters, transformers, or other equipment of the Company caused by such material increase in the customer's connected load.

**PERMITS**

The customer shall obtain or cause to be obtained all permits, easements, or certificates, except street permits, necessary to give the Company or its agents access to the customer's premises and equipment and to enable its service to be connected therewith. In case the customer is not the owner of the premises or of intervening property between the premises and the Company's distribution lines the customer shall obtain from the proper owner or owners the necessary consent to the installation and maintenance in said premises and in or about such intervening property of all such wiring or other customer-owned electrical equipment as may be necessary or convenient for the supply of electric service to customer. Provided, however, to the extent permits, easements, or certificates are necessary for the installation and maintenance of Company-owned facilities, the Company shall obtain the aforementioned consent.

Date of Issue: October 25, 2005  
Canceling Original Sheet No. 82.2  
Issued July 20, 2004

Issued By

Date Effective: November 24, 2005

John R. McCall, Executive Vice President,  
General Counsel, and Corporate Secretary  
Lexington, Kentucky

**TERMS AND CONDITIONS**  
**Customer Responsibilities**

The construction of electric facilities to provide service to a number of customers in a manner consistent with good engineering practice and the least public inconvenience sometimes requires that certain wires, guys, poles, or other appurtenances on a customer's premises be used to supply service to neighboring customers. Accordingly, each customer taking Company's electric service shall grant to Company such rights on or across his or her premises as may be necessary to furnish service to neighboring premises, such rights to be exercised by the Company in a reasonable manner and with due regard for the convenience of the customer.

The Company shall make or cause to be made application for any necessary street permits, and shall not be required to supply service under the customer's application until a reasonable time after such permits are granted.

**Date of Issue: October 25, 2005**

**Issued By**

**Date Effective: November 24, 2005**

**John R. McCall, Executive Vice President,  
General Counsel, and Corporate Secretary  
Lexington, Kentucky**