

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DONALD G. SIMPSON)	
)	
COMPLAINANT)	
)	
V.)	CASE NO. 2007-00213
)	
LOUISVILLE GAS AND ELECTRIC COMPANY)	
)	
DEFENDANT)	

O R D E R

On May 27, 2007, Donald G. Simpson (“Complainant”) initiated the instant matter against Defendant, Louisville Gas and Electric Company (“LG&E”), alleging that LG&E failed to discontinue service in a timely manner thereby causing him to incur an outstanding balance on his account. Complainant requested a refund of his deposit as well as a refund for West End Charities, a charitable organization that ultimately paid LG&E the outstanding amount owed by Complainant. LG&E filed an answer on June 27, 2007 and moved to dismiss the complaint for failure to state a claim upon which the Commission could grant relief. In its answer, LG&E asserted that it violated neither the provisions of its tariff nor the Commission’s statutes and regulations. On July 27, 2007, Complainant filed a response to LG&E’s motion. On August 10, 2007, LG&E filed a reply in support of its motion to dismiss. The matter now stands submitted to the Commission for resolution.

For the reasons stated below, the Commission finds that the complaint filed on May 27, 2007 in this case should be dismissed in its entirety.

FINDINGS OF FACT

The material facts of this case are not in dispute. LG&E established gas and electric service at 5101 Valiant Drive, Apartment 1, Louisville, Kentucky, in Complainant's name on June 11, 2004.¹ In his complaint, Complainant alleged that he "had someone contact" LG&E in November 2004² to request that electric service to his apartment be discontinued due to the fact that he was serving a 5-year prison sentence.³ LG&E acknowledged that Jacqueline Keith, a friend of Complainant, contacted one of its call centers on December 14, 2004 requesting that service be discontinued to Complainant's apartment.⁴ LG&E advised Ms. Keith that it could not honor her request, explaining that it required the customer listed on the account to notify LG&E when discontinuance of service is desired.⁵ LG&E further explained to Ms. Keith that such a requirement was to protect the customer from wrongful termination of service by an unauthorized third party.⁶ LG&E offered Ms. Keith the following two options for terminating service in the event Complainant was unable to do so himself:

¹ Answer and Motion to Dismiss of LG&E at 2.

² Although Complainant alleges that the call to LG&E was made sometime in November 2004, LG&E's record indicates that the call was actually placed in December 2004. Thus, the Commission will refer to the December 2004 date in this Order.

³ Complaint at 1.

⁴ Answer and Motion to Dismiss of LG&E at 2.

⁵ Id. at 4.

⁶ Id.

(1) present court documentation that Complainant was incarcerated; or (2) have a person designated as Power of Attorney for Complainant request termination of service on his account.⁷ LG&E also advised Ms. Keith that Complainant would be required to pay for all service furnished until a termination notice was provided by him and final meter readings made by LG&E.⁸

LG&E disconnected electric service on February 15, 2005⁹ and disconnected gas service on April 13, 2005 due to Complainant's non-payment.¹⁰ Complainant's name was removed from the account on May 16, 2005 after all service to the account was disconnected for non-payment.¹¹ According to LG&E, a balance of \$383.56 was owed at that time.¹² On May 18, 2005, LG&E applied Complainant's deposit and interest thereon to the unpaid balance, leaving a balance due of \$196.43.¹³

On May 9, 2007, Complainant requested service at his current address at 1726 Garland Avenue, Louisville, Kentucky, but was advised by LG&E that his pending balance had to be paid in full before new service could be established.¹⁴ LG&E also provided Complainant with information for seeking financial assistance from a local

⁷ Id.

⁸ Id. at 3.

⁹ Id. at 2.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id. at 4.

agency.¹⁵ LG&E was subsequently contacted by a charitable agency pledging to pay Complainant's unpaid balance of \$196.43, and that amount was posted to Complainant's account on June 5, 2007.¹⁶ After receiving notice of the pledge, LG&E connected service to Complainant's current address.¹⁷

ARGUMENTS

Complainant contends that LG&E failed to disconnect his service as requested by Ms. Keith on his behalf in December 2004. Complainant claims that LG&E failed to shut off his service until May 2005, causing him to incur an outstanding balance of \$196.43. Complainant suggests that LG&E refused to disconnect his service because LG&E wanted to retain his \$180 deposit and to bill him for service that he could not use. Complainant argues that LG&E's actions violated 807 KAR 5:006, Section 12, which governs a customer's request for termination of service.

LG&E counters that it acted in full compliance with its tariff and the Commission's regulations. LG&E notes that its tariff requires the customer who has been receiving service to notify the company when discontinuance of service is desired.¹⁸ LG&E states that the purpose of such a requirement is to protect the customer from wrongful termination of service by an unauthorized third party. LG&E also relies on 807 KAR 5:006, Section 12(1), in support of its position.

807 KAR 5:006, Section 12(1), provides as follows:

¹⁵ Id.

¹⁶ Id. at 5.

¹⁷ Id.

¹⁸ LG&E's Rates, Terms and Conditions for Furnishing Electric Service, P.S.C. of Ky. Electric No. 6, Original Sheet No. 82.

Any customer desiring service terminated or changed from one address to another shall give the utility three (3) working days' notice in person, in writing, or by telephone, provided such notice does not violate contractual obligations or tariff provisions. The customer shall not be responsible for charges for service beyond the three (3) day notice period if the customer provides reasonable access to the meter during the notice period. If the customer notifies the utility of his request for termination by telephone, the burden of proof is on the customer to prove that service termination was requested if a dispute arises.

LG&E further points out that 807 KAR 5:006, Section 1(1), defines "customer" as "any person...applying for or receiving service from any utility."

LG&E asserts that its action in refusing to discontinue service to Complainant's apartment was within the bounds of the provisions of its tariff as well as Commission regulations. LG&E notes that, at all relevant times, Complainant was the only person listed on the subject account. LG&E argues that Complainant did not ever directly contact LG&E, either in person, in writing, or by telephone, to request termination of service. The only contact LG&E received concerning the discontinuance of service to Complainant's account was from Ms. Keith, who was not a customer of record on Complainant's account.

CONCLUSIONS OF LAW

The Commission finds that LG&E's actions were lawful. Complainant has the burden of proving that he, as customer of record on the account at issue, directly notified LG&E by telephone of his desire for termination of services.¹⁹ A review of the record reveals that Complainant has not satisfied his burden of proof. Accordingly, LG&E is entitled to a dismissal of the complaint.

¹⁹ 807 KAR 5:006, Section 12(1).

LG&E's decision to continue service to Complainant's account did not run afoul of any of its tariff provisions or Commission regulations. The regulation governing a customer's request for termination of service provides that "[a]ny customer desiring service terminated...shall give the utility three (3) working days' notice in person, in writing, or by telephone, provided such notice does not violate contractual obligations or tariff provisions."²⁰ The term "customer" is defined in 807 KAR 5:006, Section 1(2), as "any person...receiving service from any utility." The language contained in LG&E's tariff relating to a customer's request for discontinuance of service is consistent with the regulations addressing the same. LG&E's tariff provides as follows:

Customers who have been receiving electric service shall notify the Company when discontinuance of service is required, and shall pay for all electric service furnished until such notice has been given and final meter readings made by the Company.²¹

Complainant admits that he did not directly contact LG&E to request that service to his account be discontinued. Complainant states that he was unable to do so because he was in jail.²² The evidence indicates that Ms. Keith, a friend of Complainant, called LG&E on Complainant's behalf to request that service to Complainant's account be discontinued. However, under 807 KAR 5:006, Section 1(2), as well as LG&E's tariff, Ms. Keith could not be considered as a customer on the account at issue. Ms. Keith was neither an applicant nor a person receiving electric service from LG&E. 807 KAR 5:006, Section 12(1), does not apply in this instance

²⁰ Id.

²¹ LG&E Rates, Terms and Conditions for Furnishing Electric Service, P.S.C. of Ky. Electric No. 6, Original Sheet No. 82.

²² Complaint at 2.

because the notice given to LG&E was in violation of its tariff provision. Further, because no notice was provided to LG&E by the customer listed on the subject account, LG&E acted lawfully in not discontinuing service to Complainant's account.

LG&E's stated rationale for the above requirement is to prevent the wrongful termination of service by an unauthorized third party. While the Commission recognizes that this requirement is a sound policy, we nonetheless urge LG&E to implement a procedure that is more customer responsive. Where, as here, information is accessible in the public domain which could corroborate a caller's request to terminate service on behalf of a customer, the Commission suggests that LG&E implement a proactive procedure to allow its customer service representatives the flexibility of obtaining such publicly available information and, if the information corroborates the information provided by the caller, honor the termination request.

For the foregoing reasons, the Commission finds that Complainant has failed to establish a valid case against LG&E and that the complaint should be dismissed.

IT IS THEREFORE ORDERED that:

1. The complaint filed herein on May 27, 2007 against LG&E is dismissed.
2. This case is closed and is removed from the Commission's docket.

Done at Frankfort, Kentucky, this 24th day of October, 2007.

By the Commission

ATTEST:



Executive Director