

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MARY CHARLOTTE SMYLY)	
)	
COMPLAINANT)	
)	
V.)	CASE NO. 2009-00364
)	
LOUISVILLE GAS AND)	
ELECTRIC COMPANY)	
)	
DEFENDANT)	

O R D E R

On September 3, 2009, Complainant, Mary Smyly, filed a Complaint against Defendant, Louisville Gas and Electric Company ("LG&E"). Ms. Smyly's Complaint requests that LG&E: (1) reinstate its select due date program; (2) remove a deposit charge from her account; (3) remove a reconnection fee from her account; (4) refund late fees charged to her account; and (5) compensate her for damage to electronic equipment she believes was caused when her electric service was disconnected. LG&E filed its Answer to the Complaint on October 8, 2009.

In response to Commission Staff's February 2, 2010 data request, LG&E states that it has refunded late fees totaling \$36.20 to Ms. Smyly's account. LG&E also states that it sent an e-mail to Ms. Smyly on January 20, 2010 in which it offered to register her for its new Fixed and Limited Income Extension ("FLEX") program, which would allow

Ms. Smyly to choose her monthly bill due date. However, LG&E states that, as of the date it filed its February 12, 2010 data response, it had not yet received an answer from Ms. Smyly regarding the FLEX program. LG&E further states that Ms. Smyly has indicated that she wants to communicate with the company only through the U.S. mail, although, in a telephone conversation with Commission Staff on February 17, 2010, Ms. Smyly stated that she intended to respond to the e-mail from LG&E and to sign up for the FLEX program.

LG&E states in its February 12, 2010 data response that it believes it has done everything it can, "within the confines of the Commission's regulations and statutes" and its own tariff, to satisfy all of the issues raised by Ms. Smyly's September 3, 2009 Complaint. LG&E states that the \$240 deposit and the \$20 reconnection fee that resulted from the December 3, 2008 disconnection of Ms. Smyly's electric service for nonpayment were proper pursuant to 807 KAR 5:006 and the Company's tariff. As such, LG&E states that it will not remove those charges from her account. LG&E states that it does not believe that it is responsible for any damage caused to Ms. Smyly's electronic equipment and notes that "the Commission has consistently recognized that it lacks jurisdiction to award damages for claims arising out of the provision of utility service."¹ Finally, LG&E moves the Commission to dismiss the Complaint.

The Commission agrees with LG&E's argument that it cannot award monetary compensation to Ms. Smyly for the alleged damage to her electronic equipment. As the Commission is without jurisdiction to grant Ms. Smyly the relief she requests with regard

¹ LG&E Answer at 3 (citing Carr v. Cincinnati Bell, 651 S.W.2d 126, 128 (Ky. App. 1983)).

to her alleged property damage, the Commission will dismiss Ms. Smyly's claims for monetary damages against LG&E.

807 KAR 5:006, Section 8(3)(b), authorizes utilities to collect a reconnection fee, and LG&E's tariff provides for such a reconnection fee.² 807 KAR 5:006, Section 7, allows utilities to require the payment of a deposit, and LG&E's tariff provides for such a deposit.³ In its October 8, 2009 Answer, LG&E argued that the deposit and reconnection fee for the December 3, 2008 disconnection of Ms. Smyly's service were proper because LG&E had provided a proper "brown bill" notice to her prior to December 3, 2008. Attached to LG&E's Answer as Exhibit A is a copy of a disconnection notice dated November 7, 2008, with a final due date of November 21, 2008, addressed to Mary Smyly at the residence listed in her Complaint. 807 KAR 5:006, Section 13(5), provides that:

When advance termination notice is required, the termination notice shall be mailed or otherwise delivered to the last known address of the customer. The termination notice shall be in writing, distinguishable and separate from any bill. The termination notice shall plainly state the reason for termination, that the termination date will not be affected by receipt of any subsequent bill, and that the customer has the right to dispute the reasons for termination. The termination notice shall also comply with the applicable requirements of Section 14 of this administrative regulation.

The Commission finds that LG&E has presented evidence that supports its request to dismiss Ms. Smyly's claims regarding the deposit and reconnection fee which

² Original Sheet No. 49 of the tariff that was effective at the time Ms. Smyly's service was disconnected—currently P.S.C. Electric No. 7, Original Sheet No. 45 of the LG&E tariff.

³ Original Sheet No. 87 & 87.1 of the tariff that was effective at the time Ms. Smyly's service was disconnected—currently P.S.C. Electric No. 7, Original Sheet No. 102 of the LG&E tariff.

resulted from the disconnection of service to her residence on December 3, 2008. Therefore, Complainant has the burden of proof to go forward with the Complaint regarding those issues, and she must provide some affirmative evidence showing why the charges are improper, as the evidence appears to demonstrate that a disconnection notice was sent to her address by LG&E prior to the disconnection date in compliance with 807 KAR 5:006, Section 13(5), and she did not pay her account arrearage prior to the termination of her service on December 3, 2008. As such, the Commission will order Ms. Smyly to provide a response to LG&E's motion to dismiss her claims regarding the deposit and reconnection charges.

As LG&E has offered to register Ms. Smyly for its new FLEX program, which will allow her to choose her monthly billing date, and as LG&E has refunded late fees to Ms. Smyly's account, the Commission finds that LG&E has presented an offer of satisfaction as to Issues 1 and 4 of the Complaint. Therefore, the Commission will order Ms. Smyly to file a response if she believes that LG&E has not, in fact, resolved those issues.

Based upon the foregoing, IT IS HEREBY ORDERED that:

1. Complainant's claim for monetary damages for electronic equipment she claims was damaged due to disconnection of her electric service is dismissed.
2. If Complainant believes that LG&E's offer of satisfaction has not resolved her September 3, 2009 Complaint with regard to (a) allowing her to select her billing due date and (b) refunding late charges to her account, she shall file a statement with the Commission within 20 days of the date of issuance of this Order, stating the reason or reasons why LG&E's offer of satisfaction has not resolved those issues, the relief she

seeks from the Commission regarding those issues, and whether she desires a formal hearing before the Commission on those issues.

3. Within 20 days of the date of this Order, Complainant shall file a response to LG&E's motion to dismiss her claims regarding removal of the \$240 deposit charge and the \$20 reconnection charge from her account. Complainant shall provide affirmative evidence demonstrating why the charges are improper and shall explain if she believes LG&E's disconnection notice dated November 7, 2008 was not issued in compliance with 807 KAR 5:006, Section 13(5).

4. If Complainant chooses to attach any documents or exhibits in support of her response, Complainant shall include in the response a detailed description of how each document or exhibit supports her allegations regarding the deposit charge and the reconnection charge.

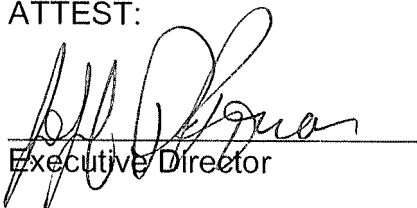
5. Complainant shall serve a copy of any statement or response filed in compliance with this Order on LG&E at the address shown in the service list which accompanies this Order.

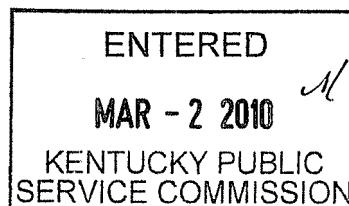
6. Any Reply to the Response shall be filed no later than 10 days thereafter.

7. If no statement or response is filed by Complainant within 20 days of the date of issuance of this Order, the case shall be dismissed and shall be removed from the Commission's docket.

By the Commission

ATTEST:


Executive Director



Lonnie E Bellar
VP - State Regulation
Louisville Gas and Electric Company
220 W. Main Street
P. O. Box 32010
Louisville, KY 40202

Mary Charlotte Smyly
1412 N. English Station Rd
Louisville, KY 40223