

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 requested 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 that she believes was caused when her electric service was disconnected.

LG&E filed its Answer to the Complaint on October 8, 2009. During the pendency of this case, LG&E made the Commission aware of its new Fixed and Limited Income Extension ("FLEX") program. The FLEX program allows a qualifying customer to choose his or her monthly bill due date. As the FLEX program addresses one of the issues raised by Ms. Smyly in her Complaint, Commission Staff issued a data request to

LG&E on February 2, 2010 to determine whether Ms. Smyly would qualify for inclusion in the FLEX program.

In its February 12, 2010 response to Commission Staff's First Data Request, LG&E states that it 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 the FLEX program. However, LG&E stated 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.

On March 2, 2010, the Commission issued an Order in which it dismissed Complainant's claims for monetary damages, which the Commission does not have jurisdiction to award.¹ The March 2, 2010 Order also noted that LG&E's offer to enroll Complainant in the FLEX program and its refund of late fees constitute an offer of settlement as to issues (1) and (4) of the Complaint.

The March 2, 2010 Order required Ms. Smyly to file a response to the offer of settlement and to provide some affirmative evidence showing why the \$240 deposit and the \$20 reconnect fee that resulted from the December 3, 2008 disconnection of her electric service for nonpayment were not proper pursuant to 807 KAR 5:006 and LG&E's tariff.

Ms. Smyly sent a response to LG&E on March 18, 2010, but a copy of the response was not filed into the administrative record at that time. However, LG&E filed a reply to the March 18, 2010 response on April 1, 2010. After receiving the reply without having received a copy of the response, Commission Staff consulted with

¹ See Carr v. Cincinnati Bell, 651 S.W.2d 126, 128 (Ky. App. 1983).

Complainant and counsel for LG&E regarding the March 18, 2010 response and learned that Complainant had mailed a copy of the response to the Commission but had not made a copy for her own records. Pursuant to Commission Staff's request, a copy of the March 18, 2010 response was sent to Commission Staff by LG&E on April 12, 2010. Commission Staff forwarded the copy of the response to Complainant for her verification of its authenticity and was given permission by Complainant on April 15, 2010 to file that copy of the response into the administrative record on her behalf. A copy of the March 18, 2010 response was filed into the record by the Commission's Executive Director on April 22, 2010.

In the March 18, 2010 response, Ms. Smyly states that:

Timothy Melton's attachments, which is all I have ever had, do not include a "proper brown bill" nor any "brown bill" at all in the amount of \$101.62. It could not have, unless they conjured up one because there were none. And because there were none in either amount I could not have received any.

On the December 4, 2008 electric bill attached to the March 18, 2010 response as Attachment A-3, under "Billing Summary," the bill states that the amount Complainant owed on her account as of November 11, 2008 was \$101.62. Attachment A-2 to the March 18, 2010 response is a termination-of-service notice with a due date of November 21, 2008. Complainant claims in her response that she did not receive these documents from LG&E until after her electric power was terminated on December 3, 2008.

LG&E states in its reply that, in accordance with its regular billing practice, it mailed Ms. Smyly a utility bill on October 14, 2008 in the amount of \$154.26 with a due date of November 4, 2008. LG&E attached a copy of the October 14, 2008 bill as

Exhibit A to its reply. LG&E stated that it had not received payment of the October 14, 2008 bill by November 7, 2008 and, pursuant to its regular billing practice, a termination notice (“brown bill”) showing an amount due of \$156.89 was mailed to Ms. Smyly prior to November 11, 2008,² with a due date of November 21, 2008. LG&E attached a copy of the “brown bill” as Exhibit B to its reply. The Commission notes that Exhibit B to LG&E’s reply is identical in all respects to Attachment A-2 to the March 18, 2010 response.

The Commission finds that the burden of proof to go forward with a formal complaint pursuant to 807 KAR 5:001, Section 12, lies with the Complainant. The evidence presented by the parties demonstrates that a bill pre-dating the December 3, 2008 termination of Complainant’s electric service exists and that there is a dispute as to whether Complainant received the termination notice by mail. However, the Commission notes that there is no statutory or regulatory requirement that a utility utilize certified or registered mail when issuing a termination notice for nonpayment. As such, absent evidence to the contrary, the Commission must rely upon the utility’s statements that it sent utility bills and related mailings to its customer via the U.S. mail. Therefore, as the Complainant has not produced any evidence demonstrating that LG&E did not mail the November 21, 2008 brown bill to her address prior to the December 3, 2008 termination of service, the Commission finds that LG&E’s termination of service on December 3, 2008 was not improper.

² The December 4, 2008 bill which is Attachment A-3 to the March 18, 2010 response shows the previous balance due as \$154.26 and a payment of \$52.64 on November 11, 2008. Attachment A-3 also notes a charge of \$2.63 denoted as “Other Charges.” The sum of these amounts is \$156.89—the amount shown as due on November 21, 2008 on the brown bill, Attachment A-2 to Complainant’s response.

As the December 3, 2008 termination of service was not improper, the Commission finds that LG&E's decision to charge Complainant a \$20 reconnection fee and to require Complainant to pay a \$240 deposit was not improper. In its October 8, 2009 Answer, LG&E notes that:

reconnect fees are authorized by 807 KAR 5:006 §8(3)(b). In addition, deposits are authorized by 807 KAR 5:006 §7 and Original Sheet No. 87 & 87.1 of LG&E's electric tariff that was effective at that time, P.S.C. Electric No. 6 (the relevant tariff sheet is currently P.S.C. Electric No. 7, Original Sheet No. 102) of the LG&E tariff. LG&E properly required a deposit from Ms. Smyly because she was disconnected for non-payment on December 3, 2008.³

In her March 18, 2010 response, Ms. Smyly claims that LG&E "misappropriated funds that [she] sent to pay for usage of service" and "applied them to their post disconnect fees." However, the Commission finds that LG&E's application of a portion of the bill amounts paid by Complainant to LG&E on February 12, 2009 and March 10, 2009 to the \$240 deposit amount was not improper and was in accordance with LG&E's tariff:

As to the statement, "[s]ome of the money intended for services received was diverted to satisfy the contested deposit without my knowledge. I wasn't told that that was what they were doing and there was no indication on the bills," LG&E affirmatively states that Ms. Smyly's bills due on February 9, 2009 and March 9, 2009 . . . showed a required deposit of \$240. Ms. Smyly paid \$269.87 on February 12, 2009; \$214.83 was applied to her current usage charges and the balance of \$55.04 was applied to the deposit. Ms. Smyly paid \$214.83 on March 10, 2009; \$184.96 was applied to the remaining deposit and \$29.87 was applied to the account balance. Further, LG&E allowed Ms. Smyly to pay the deposit in two installments in accordance with Original Sheet No. 87 & 87.1 of LG&E's electric tariff that was effective at

³ Answer of LG&E at 3.

that time, P.S.C. Electric No. 6 (the relevant tariff sheet is currently P.S.C. Electric No. 7, Original Sheet No. 102).⁴

The Commission finds that LG&E's enrollment of Complainant in its FLEX program on March 29, 2010,⁵ its refund of late fees of \$22.77 from March 4, 2010,⁶ and its prior refund of \$36.20 for late fees from June 29, 2009 through December 28, 2009⁷ have reasonably satisfied Issue 1 (request that LG&E reinstate its select due date program) and Issue 4 (request that LG&E refund late fees) which were raised in the September 3, 2009 Complaint.

The Commission finds that Issue 2 (removal of deposit charge from her account) and Issue 3 (removal of reconnection fee from her account) which were raised in the September 3, 2009 Complaint should be dismissed. As discussed above, the Commission finds that those charges were properly applied to Complainant's account following disconnection of her electric service on December 3, 2008. The Commission also finds that, pursuant to KRS 278.260(2), a hearing is not necessary in this matter.

Based upon the foregoing, IT IS HEREBY ORDERED that the Complaint filed by Complainant, Mary Smyly, on September 3, 2009 against Defendant, LG&E, is hereby dismissed with prejudice.

⁴ Id. at 4.

⁵ Reply of LG&E at 2.

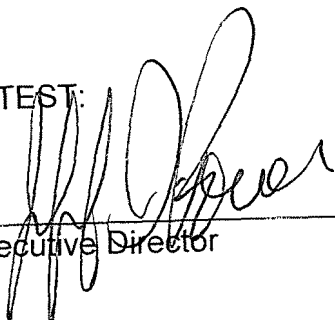
⁶ Id.

⁷ LG&E's Response to Commission Staff's First Data Request at Item 1c.

By the Commission

ENTERED *M*
JUN 15 2010
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



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