

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

NORMAN D. VERNON)	
COMPLAINANT)	
V.)	CASE NO.
)	2010 -00130
LOUISVILLE GAS AND ELECTRIC COMPANY)	
DEFENDANT)	

ORDER

On March 22, 2010, Norman D. Vernon ("Complainant"), filed a Complaint alleging that after moving into his home in 1996 he became concerned about his high gas usage. Complainant alleged that even though his neighbor's homes were similar in size to his, his gas bills were consistently about 50 percent higher than theirs and must have been in error. Even though the Complainant made yearly calls to Louisville Gas and Electric Company ("LG&E") expressing his concerns, the issue was never resolved. In 2004, Complainant participated in a utility audit and followed the program recommendations and added insulation to his residential crawl space, wrapped his hot water pipes with insulation and taped the joints of the duct work. When his gas meter was changed out in 2009, his gas usage decreased significantly and was more in line with his neighbors' usage. The Complainant asked for a refund of 50 percent of the amount he paid LG&E per year since he moved into his house.

On April 12, 2010, the Commission issued an Order directing LG&E to satisfy the matters complained of in Complainant's Complaint or file an answer to the Complaint. On April 22, 2010, LG&E filed its Answer to the Complainant's Complaint.

In its Answer, LG&E stated that Complainant had contacted LG&E about his natural gas usage on December 28, 2001; February 11, 2004; December 19, 2005; and January 21, 2009. The Answer further stated that it offered to do a test on Mr. Vernon's meter in January 2009, but explained that it would cost Mr. Vernon \$69.00 if the meter tested within the appropriate limits. During this phone call, LG&E's customer service representative told Mr. Vernon that his meter had been in service long enough to be changed out. Mr. Vernon states that LG&E never agreed to test or change his meter, but LG&E provided a taped recording of a call in which the meter test and charge for such test were conveyed to Mr. Vernon. Included in the phone call was a direction by the LG&E's customer service representative that Mr. Vernon's meter had been in service for long enough to be changed out and provided Mr. Vernon with the number to call to have the meter changed. Mr. Vernon states that he called LG&E and requested that meter be changed. LG&E states that it is unable to locate any recording or request from Mr. Vernon to have his meter changed. However, the meter was changed the day after the January 2009 call and LG&E says it was not in response to the call but rather as part of its sample meter testing program. LG&E states that when customers are randomly selected for sample testing, they are mailed letters that explain the sample test and request the customer to contact LG&E to schedule the meter change. Mr. Vernon says that he was never advised of his meter testing results.

LG&E stated that its removed gas meters are tested by Energy Economics, Inc., an LG&E contractor. Mr. Vernon's meter was a remanufactured American 5B225 meter, vintage 1956-1957, that had tested within accuracy limits on April 11, 1996 prior to being installed at Mr. Vernon's residence on April 23, 1996. This meter was removed from Mr. Vernon's residence in January 2009 as part of LG&E's meter-sampling plan. The removed meter was tested on February 10, 2009 and tested within the limits required by regulation. The Energy Economics' employee who tested the meter was certified to test meters by the Commission on June 11, 2001 and the test equipment used was certified on January 28, 2008 and recertified on June 16, 2009 and June 15, 2010. LG&E stated that it no longer purchased or remanufactured Mr. Vernon's particular model of meter. Therefore, upon it testing within limits, the meter was discarded. LG&E stated that, had the meter not tested within the tolerance allowed, it would have held the meter for 12 months. LG&E noted that only customers whose meters are found to be more than two percent fast or slow are entitled to a refund or subject to back billing. LG&E further stated that usage is not based on the usage of others and that LG&E is required to charge its customers its tariff rate based on usage. Since there was nothing that indicated Mr. Vernon's meter was improperly operating, he was charged LG&E's tariffed rate according to the usage recorded.

DISCUSSION

KRS 278.160 codifies the "filed rate doctrine." It requires a utility to file with the Commission "schedules showing all rates and conditions for service established by it and collected or enforced."¹ It further states:

¹ KRS 278.160(1).

No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for compensation greater or less than that prescribed in such schedule.²

The primary effect of KRS 278.160 is to bestow upon a utility's filed rate schedule the status of law. "The rate when published becomes established by law. It can be varied only by law, and not by act of the parties. The regulation of . . . rates takes that subject out of the realm of ordinary contract in some respects, and places it upon the rigidity of a quasi-statutory enactment."³ While a utility may file or publish new rate schedules to change its rates pursuant to KRS 278.180, it lacks the legal authority to deviate from its filed rate schedule. I "can claim no rate as a legal right that is other than the filed rate."⁴

This inflexibility is in part the result of a strong public policy to ensure rate uniformity, to "have but one rate, open to all alike, and from which there could be no departure."⁵ Equality among customers cannot be maintained if enforcement of filed rate schedules is relaxed. For this reason, neither equitable considerations nor a

² KRS 278.160(2).

³ New York N.H. & H.R. Co. v. York and Whitney, 102 N.E. 366, 368 (Mass. 1913).

⁴ Montana-Dakota Util. Co. v. Northwestern Pub. Serv. Co., 341 U.S. 246, 251 (1951).

⁵ Boston & M.R. R v. Hooker, 233 U.S. 97, 112 (1914).

utility's negligence may serve as a basis for departing from filed rate schedules.⁶ To do so would increase the potential for fraud, corruption, and rate discrimination.

The doctrine is also intended to preserve the Commission's "primary jurisdiction over reasonableness of rates and . . . ensure that regulated companies charge only those rates of which the agency has been made cognizant."⁷ The assessment of rates which the Commission has neither seen nor reviewed represents a serious challenge to the Commission's authority over rates. One purpose of the filed rate doctrine is to ensure the reasonableness of utility rates. Filed rates are presumed to have been reviewed by the Commission and found reasonable. Prior to becoming effective, they may be examined and questioned. This scrutiny is the principal reason for the Commission's existence.

KRS 278.170, which prohibits a utility from discriminating as to rates or service, reads in pertinent part as follows:

(1) No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same of substantially the same conditions.

(4) The commission may determine any questions of fact arising under this section.

⁶ Boone County Sand and Gravel Co. v. Owen County RECC, Ky. App., 779 S.W. 2d 224 (1989).

⁷ City of Cleveland, Ohio v. Federal Power Comm'n, 525 F.2d 845 (D.C. Cir. 1976).

In order to establish differential rates for customers of a utility, the Commission must find a rational basis for classifying the customers differently. The Complainant does not allege that he is not receiving "like and contemporaneous service under the same or substantially the same conditions" as other customers of LG&E.

Adjustments to any gas service bill must be made in accordance with 807 KAR 5:006, Section 10, which states in part:

- (1) If upon periodic test, request test, or complaint test a meter in service is found to be more than two (2) percent fast, additional tests shall be made to determine the average error of the meter. Said tests shall be made in accordance with commission administrative regulation applicable to the type of meter involved.

The Complainant is seeking a 50 percent refund of his charges for a 14-year period, beginning in 1996. Although Complainant believes that he was overcharged for 14 years based upon his gas usage compared with that of his neighbors, this is not the appropriate method to determine whether a customer has been appropriately charged. Customer charges are based upon the filed tariff provisions of the utility and the metered usage of the customer. The meter in question was tested for accuracy prior to its installation in 1996 and again following its removal in 2009. On both occasions the meter tested within the limits as required by 807 KAR 5:006, Section 16, and 807 KAR 5:022, Section 8. Since there is nothing that indicates that Complainant's meter was improperly operating, he was charged LG&E's tariffed rate according to the usage recorded. There is no evidence that LG&E has profited from any injury to the Complainant or that it has not charged the Complainant according to its tariff on file with the Commission.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that:

1. The gas meter that was installed by LG&E at the Complainant's residence on April 23, 1996 is the meter that is the subject of this complaint.

2. Complainant's gas meter was tested for accuracy on April 11, 1996, prior to its installation, and tested within accuracy limits.

3. Complainant contacted LG&E on several occasions between the years 1996 and 2009, including in January 2009, and complained that his natural gas usage was consistently higher than that of his neighbors.

4. Complainant's gas meter was removed and replaced in January 2009, as part of LG&E's meter-sampling plan.

5. Complainant's removed gas meter was tested on February 10, 2009 and tested within accuracy limits.

6. The particular model of meter removed from Complainant's residence was no longer being purchased or remanufactured by LG&E and it was discarded after it tested within accuracy limits.

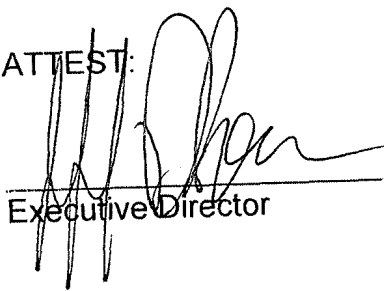
7. The Complaint against LG&E should be dismissed as there has been no violation of KRS Chapter 278 or the regulations duly authorized thereunder and the Commission is unable to grant the relief requested by the Complainant.

IT IS THEREFORE ORDERED that the Complaint filed with this Commission on March 22, 2010 is hereby dismissed with prejudice.

By the Commission

ENTERED ²⁴
DEC 21 2011
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2010-00130

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