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February 13, 2007

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CERTIFICATE OF SERVICE

RE: Case No. 2006-00009
Kentucky Utilities Company / Louisville Gas and Electric Company

I, Beth O'Donnell, Executive Director of the Public Service Commission, hereby certify that the enclosed attested copy of the Commission's Order in the above case was served upon the addressee by U.S. Mail on February 13, 2007.

Executive Director

BOD/sh
Enclosure



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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF LOUISVILLE GAS AND)
ELECTRIC COMPANY AND KENTUCKY)
UTILITIES COMPANY FOR APPROVAL OF)
REVISIONS ASSOCIATED WITH THE) CASE NO. 2006-00009
CUSTOMER RESPONSIBILITIES AND)
DISCONTINUANCE OF SERVICE SECTIONS)
OF THE TERMS AND CONDITIONS)
CONTAINED IN THEIR TARIFFS)

O R D E R

On January 3, 2006, Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities Company ("KU") (collectively, "the Companies") submitted proposed revisions to their tariffs. The tariff sheets containing the proposed revisions stated an effective date of July 1, 2004. KRS 278.180(1)¹ permits tariff revisions to become effective only upon 30 days' notice to the Commission. As the Companies failed to provide the required notice, their proposed revisions did not become effective. On August 15, 2006, the Companies resubmitted the proposed revisions with an effective date of September 14, 2006.

On September 13, 2006, the Commission found that further proceedings were necessary in order to determine the reasonableness of the proposed plan, and that such proceedings could not be completed prior to the proposed effective date. The

¹ KRS 278.180(1) provides in part: "[N]o change shall be made by any utility in any rate except upon thirty (30) days' notice to the commission, stating plainly the changes proposed to be made and the time when the changed rates will go into effect."

Commission suspended the proposed tariff for 5 months from September 14, 2006, up to and including February 13, 2007.

DISCUSSION

The Companies propose two changes to their existing tariffs: Section G of Original Sheet No. 90 ("Section G") and the "Application for Service" section on Original Sheet No. 82. In their application, the Companies state that they are making the changes to Section G in response to the Commission's Intra-Agency Memorandum dated May 17, 2005 that memorialized an informal conference conducted on March 18, 2005 in several unrelated cases. During the March 18, 2005 informal conference, Commission Staff expressed concern that the current portion of Section G relating to transferred balances of bills was not consistent with 807 KAR 5:006, Section 14(1)(f).

The Companies' current tariffs allow the utilities to transfer the balance of a previously rendered final bill to the current bill of a customer at a different location and then use the past-due balance to initiate disconnection procedures pursuant to 807 KAR 5:006, Section 14(1)(f). Section G currently states, in pertinent part:

Unpaid balances of previously rendered Final Bills may be transferred to any account for which the customer has responsibility and may be included on initial or subsequent bills for the account to which the transfer was made. Such transferred Final Bills, if unpaid, will be subject to the Company's collection and disconnection procedures.

807 KAR 5:006, Section 14 (f)(1), provides that "[a] utility may terminate service at a point of delivery for nonpayment of charges incurred for utility service at that point of delivery...." Under the current tariff, the Companies have the right to disconnect service at a point of delivery for nonpayment of charges incurred at another location, which contravenes 807 KAR 5:006, Section 14(1)(f).

On its own initiative, the Companies have filed with the Commission proposed changes to Section G. The proposed Section G is as follows:

Service will not be supplied to any premises if the applicant or customer is indebted to the Company for service previously supplied at the same or any other premises until payment of such indebtedness shall have been made. Service will not be continued to any premises if the applicant or customer is indebted to the Company for service previously supplied at the same premises in accordance with 807 KAR 5:006, Section 14(1)(f). Unpaid balances of previously rendered Final Bills may be transferred to any account for which the customer has responsibility and may be included on initial or subsequent bills for the account to which the transfer was made. Such transferred Final Bills, if unpaid, will be part of the past due balance of the account to which they are transferred. When there is no lapse in service, such transferred final bills will be subject to the Company's collection and disconnection procedures in accordance with 807 KAR 5:006, Section 14(1)(f). Final Bills transferred following a lapse in service will not be subject to disconnection unless: (1) such service was provided pursuant to a fraudulent application submitted by the customer; (2) the customer and the Company have entered into a contractual agreement which allows for the disconnection; or (3) the current account is subsequently disconnected for service supplied at the point of delivery, at which time, all unpaid and past due balances must be paid prior to reconnect. The Company shall have the right to transfer Final Bills between residential and commercial residential characteristics (e.g., service supplying common use facilities of any apartment building) [sic] revenue classifications. (Proposed changes are underlined.)

The primary purpose for the changes is to "distinguish between the provision of service and the continuance of service."² Essentially, the Companies will not extend service to a potential customer if that customer is previously indebted and the Companies will disconnect service for indebtedness only if "the customer is indebted to

² Application at 4.

the utility for service at the premises.”³ The changes also reference 807 KAR 5:006, Section 14(1)(f), as governing the disconnection of service. The Commission finds that these changes bring Section G into compliance with 807 KAR 5:006, Section 14(1)(f).

Another proposed change addresses instances when the Companies provide service to a new residence before a final bill is rendered at the previous residence. The customer can agree to have the final bill from the previous residence transferred to the account of the new residence and, if the customer fails to pay either bill, the Companies can disconnect service for nonpayment. This arrangement applies after the Companies have received the customer’s agreement. Absent the customer’s agreement, the Companies can, pursuant 807 KAR 5:006, Section 14(1)(d), refuse service at the new location until the final bill from the previous residence is paid.

Additional changes to Section G describe exceptions for situations when the Companies can disconnect service at a location for reasons other than indebtedness. One exception is for situations when service was extended on the basis of a fraudulent application and the fraudulent application prevented the Companies from discovering the prior indebtedness. Another exception is for situations in which the Companies enter into agreements with the customers whereby the customers agree that transferred balances are subject to disconnection procedures for nonpayment (e.g., “read and leave on” agreements between a landlord/property owner and the Companies). The final exception is for situations when customers are disconnected for nonpayment at their current addresses, and they have a previously transferred final bill. At such time the customer must pay all previous indebtedness prior to resumption of service. The

³ Id.

Commission finds that the proposed exceptions also do not run afoul of applicable regulations or statutes.

Whereas the proposed changes to Section G were sought to address apparent non-compliance with Commission regulations, the changes to the section titled "Application for Service" on Original Sheet No. 82 seek to develop a new classification of service: conditional service. The proposed section is as follows:

A written application or contract, properly executed, may be required before the Company is obligated to render [gas/electric] service. The Company shall have the right to reject for valid reasons any such application or contract. The provision of new service to an applicant shall be conditional and may be disconnected without advance notice for seventy-two (72) hours from the time of application in order for the Company to confirm tariffed rules and Commission administrative regulations have been met. (Proposed language underlined.)

The purpose of the proposed change is to "provide the protection to the Companies afforded by regulation and the Companies' tariffs."⁴ The Companies state that, as a matter of convenience, they try to furnish service as quickly as possible after an application for service is received, although they have up to 72 hours in which to extend service, pursuant to 807 KAR 5:006, Section 13(4). The Companies claim that due to this expedited process, they lack sufficient time to "perform the due diligence necessary to, among other things, check for indebtedness for prior service."⁵ If, after connection of service but before the expiration of 72 hours, prior indebtedness is discovered, the Companies may disconnect the customer's service without notice.

⁴ Application at 4.

⁵ Id.

The Companies state that any prior indebtedness or non-compliance with tariff rules or regulations usually is detected when application for service is made. In those instances, service is refused until the deficiencies are remedied. However, if service is extended and prior indebtedness is not detected until later, the Companies are allowed to disconnect service only according to the Commission regulations, a process that can take several months. The Companies claim that they are trying to limit their exposure while also accommodating customers. The Companies also claim that the only other option is to wait up to 72 hours to activate service because, in some cases, it takes several hours to determine if a customer is previously indebted to the Companies. The Companies claim to have difficulty determining prior indebtedness when, “[an] applicant has provided inaccurate information that obscures the Companies’ ability to identify indebtedness or that the applicant is merely acting as an agent for a person who is indebted to the Company....”⁶

When an application for service is made, the applicant is requested to provide the Social Security numbers and full legal names of all adult occupants of the household.⁷ The Social Security numbers are verified through a third party. The Companies also use the Social Security numbers and provided names to search their Customer Information System to determine prior indebtedness.⁸

If the Companies determine that the applicant is previously indebted, service will be terminated without notice. The Companies state that upon application for service,

⁶ LG&E’s and KU’s Responses to Commission Staff’s First Data Request, Response to Question #1.

⁷ Id.

⁸ Payment history records are generally available for the previous 3 years. Id.

the applicant is informed of the conditional nature of the service and that the service can be terminated without notice.⁹ If, in the event the Companies mistakenly terminate the conditional service, the Companies state that the service will be restored promptly and that they will work with the customer to address any remaining issues. If issues remain unresolved, the Companies will inform the customer of his/her right to file a complaint with the Commission and will provide the Commission's address and telephone number.¹⁰

FINDINGS

The proposed changes to Section G remove any conflict with existing Commission termination procedures. They also ensure that any disconnection will take place in accordance with 807 KAR 5:006, Section 14. Therefore, we find that the proposed changes to Section G are reasonable and should be accepted. We also find that the proposed change to Original Sheet No. 82 is unreasonable. The Companies propose to create a type of "conditional" service that is not addressed in existing statutes or Commission regulations. Other states may allow this practice but, generally, this practice would be allowed in Kentucky only "by the authority of statute, charter provision or regulation."¹¹ 807 KAR 5:006, Section 14, sets forth the conditions for disconnection of service. Generally speaking, at least some notice to the customer is

⁹ Informal Conference Memorandum dated September 18, 2006 at 2.

¹⁰ LG&E's and KU's Responses to Commission Staff's First Data Request, Response 1, subpart e to Question #1.

¹¹ Corpus Juris Secundum 38A C.J.S. Gas § 56 (footnote omitted.) See also, Columbia Gas of Ohio, Inc. v. Public Utilities Commission of Ohio, 449 N.E.2d 433 (Ohio 1983). (The Ohio Supreme Court concluded that a utility cannot offer "conditional service" or terminate service without notice unless the applicable law allows for such. In the alternative, the utility can seek specific permission to deviate from the regulation.)

required prior to discontinuing service. Although limited instances exist in which a utility can terminate service without notice (if a dangerous condition exists or for illegal use or theft of service), Kentucky law currently does not provide for the discontinuance of service for prior indebtedness without notice regardless of whether service has been extended for hours or years.

The Companies propose to establish a new conditional service and have not requested a deviation from the provisions of 807 KAR 5:006, Section 14, prohibiting that new conditional service. Absent a request for deviation, which the Commission may or may not grant, the Commission cannot approve the proposed revisions to Original Sheet No. 82. Should the Companies desire to pursue the creation of this conditional service, they must first apply to the Commission for a deviation from 807 KAR 5:006, Section 14.

IT IS THEREFORE ORDERED that:

1. The proposed changes to the "Application for Service" section on Original Sheet No. 82 of the Companies' tariffs are rejected.
2. The proposed changes to Section G of Original Sheet No. 90 of the Companies' tariffs are approved.
3. Within 20 days of the date of this Order, the Companies shall file tariff sheets pursuant to this Order.

Done at Frankfort, Kentucky, this 13th day of February, 2007.

By the Commission

ATTEST:


Executive Director

Case No. 2006-00009