

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BRENDA JOYCE CLAYTON)	
)	
COMPLAINANT)	
V.)	CASE NO.
)	2011-00211
)	
LOUISVILLE GAS AND ELECTRIC COMPANY)	
)	
DEFENDANT)	

ORDER

On May 19, 2011, Brenda Joyce Clayton ("Complainant") filed a Complaint against Louisville Gas and Electric Company ("LG&E") which she amended on August 4, 2011.¹ Complainant alleges that she has been improperly charged \$601.19 for gas service and that, while contesting the charges through the Commission, LG&E unlawfully disconnected her service. Complainant states that subsequent to challenging the gas charges in October 2009 she remained without gas service until March 2010. In March 2010, Complainant's service was restored after she contacted LG&E. According to the Complainant, "Staff members finding out and explaining to me that I did not owe LG&E \$601.19 that someone had made a very bad mistake. On that same day my gas

¹ Complainant's original Complaint was filed on May 19, 2011. In response to a Commission Order of July 15, 2011 which found that the Complaint did not state a *prima facie* case, Complainant filed a two-page Amended Complaint via facsimile on August 2, 2011, which was followed on August 4, 2011 with Complainant's 14-page Amended Complaint, which included the two pages filed on August 2, 2011.

was restored supposedly at no cost.”²

Complainant states that her account remained current until March 2011, at which time the \$601.19 charge was added back to her account, along with an additional charge of \$110.46, bringing the total amount currently in dispute to \$711.65.³ In addition, Complainant claims that her October 13, 2009 statement showed a credit of \$270.57, which she wants LG&E to reimburse her.⁴ In March 2011, Complainant did not agree that she owed LG&E \$711.65 and claims that LG&E threatened to disconnect her service. Complainant filed an Informal Complaint with the Commission and, while it was pending, LG&E disconnected her service.⁵

Complainant is requesting that the Commission order LG&E to remove the \$711.65 from her bill; pay her the \$270.57 credit she alleges was on her October 2009 bill; and reprimand LG&E for unlawfully disconnecting her service while she was disputing these charges through the Commission.

On August 31, 2011, the Commission issued an Order directing LG&E to satisfy the matters complained of or file an answer. LG&E filed an Answer on September 12,

² Complaint at 10. Note: Several pages of the Complaint, as filed, were numbered, but generally the pages were not numbered. As a method of identification only, numbers have been assigned to the pages in the sequence filed. This also applies to the Amended Complaint.

³ *Id.* According to the Complainant, “[t]he gas and light stayed on for approx. 1 yr. after that point. Then in March of 2011 I called LG&E to make late payment arrangement and spoke with a gentlemen [sic] who informed me that my utilities would be shut off, since I had a balance of \$601.19. I tried to explain the situation but when I went to pay my bill the \$601.19 and some other charges had been added back to my account # Now my new past due amount from LG&E is as follows; \$711.65 as of 3/31/11 according to statement received 5/4/11.”

⁴ Complaint at 9. “My Account appears to have been credited \$270.57 due to their calculation which are [sic] as stated by LG&E . . . that was suppose [sic] to be credited to my account # . . . is not figured into LG&E’s calculations? (Why not?).” See also, Amended Complaint at 2. “I would like for LG&E to . . . reimburse me for the \$270.57 which it appears they owe me on the statement sent out on October 13, 2009 plus any interest due to me.”

⁵ Amended Complaint at 2.

2011,⁶ which included two affirmative defenses. LG&E's first affirmative defense states that "[t]he Complaint, or parts of it, fails to set forth any claim upon which relief can be granted by this Commission and, therefore, should be dismissed."⁷ LG&E's second affirmative defense states that "[t]he Complainant has failed to set forth a prima facie case that LG&E has violated its tariff or any statute or Commission regulation, and the Complaint should be dismissed for that reason."⁸

According to LG&E, the starting point of the current dispute began on April 7, 2009 when the Complainant contacted LG&E in an effort to avoid disconnection of electric service to her home.⁹ LG&E states that it advised Complainant that she needed to pay \$140.33 in order to avoid disconnection of electric service and that \$1,217.83 was her remaining gas balance. LG&E states that the Complainant never disputed the amount of either the electric or the gas bill.¹⁰ According to LG&E, in May 2009 it sent a Disconnect Notice to Complainant in the amount of \$1,231.11 with a payment due date of June 1, 2009. On May 28, 2009, Complainant made a payment of \$200.00 on her original account ("Combined Account") and, on June 3, 2009, Complainant's electric service was disconnected for nonpayment.¹¹

⁶ LG&E filed its Answer and described the events that occurred between itself and the Complainant that resulted in the current dispute. On November 15, 2011, Commission Staff issued its First Request for Information, to which LG&E responded on December 5, 2011. On January 6, 2012, Commission Staff issued its Second Request for Information, to which LG&E responded on January 20, 2012.

⁷ Answer at 7, LG&E's First Affirmative Defense is herein treated as a Motion to Dismiss.

⁸ *Id.* at 8, LG&E's Second Affirmative Defense is herein treated as a Motion to Dismiss.

⁹ Answer at 2. See also, Complaint at 1-2.

¹⁰ Answer at 2.

¹¹ *Id.*

Complainant contacted LG&E on June 11, 2009 and expressed interest in splitting her gas service from her electric service in order to have her electric service reconnected.¹² Complainant was told that someone would contact her with a split quote; however, LG&E admits that it did not follow up or contact her.¹³ Complainant paid \$250.00 on the Combined Account on June 12, 2009. On June 22, 2009, Complainant again contacted LG&E and was given a split quote: \$104.72 for electric service and \$796.40 for gas service.¹⁴

On June 26, 2009, Complainant made a payment of \$107.00; a new account ("Split Account") was established;¹⁵ and Complainant's electric service was reconnected.¹⁶ LG&E states that a final bill for the Combined Account in the amount of \$485.79 was mailed to Complainant with a due date of September 21, 2009. On that same day, LG&E mailed Complainant the first bill for the Split Account, which also had a due date of September 21, 2009. The Split Account included charges for current electric use, a gas customer charge, both a gas and electric deposit, and a reconnection

¹² Complaint at 2. Complainant confirms that "LGE split my account back in June of 2009 at my request due to large gas bills, I asked that gas be shut off and lights be turned on, since it was summer I could use the electricity for air and also have lights, refrigerator etc., I could bathe and eat at my sisters [sic] house. This is when all the trouble began."

¹³ Answer at 2-3.

¹⁴ *Id.* at 3.

¹⁵ LG&E's Response to Commission Staff's Second Request for Information, Item A-1.b. "Gas and electric services are typically listed on the same account to ensure that all services at a premise location are tracked together. In order to link the split gas amount to Ms. Clayton's new customer account, it was necessary to transfer to it the final billed amount from the old account. To complete the split transaction, the gas amount was then credited to the new account and debited to a holding account for payment when Ms. Clayton desired reconnection of her gas service."

¹⁶ Answer at 2-3.

fee. LG&E removed the \$160.00 gas deposit after a call from Complainant on September 28, 2009.¹⁷

On September 28, 2009, the balance of \$485.79¹⁸ from the Combined Account was transferred to the Split Account. The Split Account was also credited \$601.19 for gas usage prior to June 2009.¹⁹ The outstanding \$601.19 gas charge was transferred from the Split Account and placed in what LG&E referred to as a hold account ("Hold Account").²⁰ On October 15, 2009, Complainant contacted LG&E about having her gas service restored. LG&E, after only checking the Split Account balance, told the Complainant, incorrectly, that "\$32.06 is the total amount of your bill."²¹ Complainant paid \$33.66 on October 26, 2009, but was denied gas service because of the outstanding balance of \$601.19, which remained in the Hold Account. On November 12, 2009, Complainant again contacted LG&E about restoring her gas service and was told that she would need to pay the outstanding gas balance, a gas deposit and a \$29.00 reconnect fee.²² Complainant disputed these charges, did not pay them, and remained without gas service until March 2010, when LG&E restored her service.²³

¹⁷ *Id.* at 3.

¹⁸ *Id.* at 3. The \$485.79 resulted after applying a \$240.00 deposit, \$7.70 in interest and two payments totaling \$357.00 made in June 2009.

¹⁹ *Id.* at 4.

²⁰ *Id.* at 4.

²¹ *Id.* at 6.

²² *Id.* at 7.

²³ Amended Complaint at 2. See also Answer at 7. LG&E acknowledges that Complainant's gas service was reconnected in March 2010, but further states that "Ms. Clayton's gas service was mistakenly reconnected in March 2010, apparently without noting the outstanding gas balance."

On March 3, 2011, Complainant contacted LG&E for a one-day extension to pay her bill. LG&E then discovered that Complainant's gas service had been mistakenly reconnected in March 2010 without Complainant paying the \$601.19 past-due balance in the Hold Account. In order to correct its mistake, LG&E transferred the \$601.19 past due gas balance from the Hold Account to Complainant's Split Account.²⁴ LG&E admits that it mistakenly disconnected Complainant's electric service on April 29, 2011 while an informal complaint was pending with the Commission, but states that Complainant's service was restored on the same day.²⁵

APPLICABLE LAW

The Commission has exclusive jurisdiction over the regulation of rates and service of utilities as provided under KRS 278.040(2).²⁶ Pursuant to KRS 278.260(1),²⁷ the Commission is also vested with original jurisdiction over complaint matters relating to rates or service of any utility. The allegation over which the

²⁴ Answer at 7.

²⁵ *Id.* at 7.

²⁶ KRS 278.040(2) provides in full as follows:

The jurisdiction of the Commission shall extend to all utilities in this state. The commission shall have exclusive jurisdiction over the regulation of rates and service of utilities, but with that exception nothing in this chapter is intended to limit or restrict the police jurisdiction, contract rights or powers of cities or political subdivisions.

²⁷ KRS 278.260(1) provides, in relevant part, as follows:

The commission shall have original jurisdiction over complaints as to rates or service of any utility, and upon a complaint in writing made against any utility by any person that any rate in which the complainant is directly interested is unreasonable or unjustly discriminatory . . . the commission shall proceed, with or without notice, to make such investigation as it deems necessary or convenient.

Commission exercises jurisdiction in this instance concerns purported excess billing for electric and gas services rendered by LG&E.

KRS 278.160 codifies the “filed rate doctrine,” which requires a utility to file with the Commission “schedules showing all rates and conditions for service established by it or collected or enforced.” Section (2) states as follows:

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. (Emphasis added.)

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.”²⁸ 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.

The doctrine is 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.”²⁹ 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

²⁸ *New York N.H. & H.R. Co. v. York and Whitney*, 102 N.E. 366, 368 (Mass. 1913).

²⁹ *City of Cleveland, Ohio v. Federal Power Comm’n*, 525 F. 2d 845 (D.C. Cir. 1976).

effective they may be examined and questioned. This scrutiny is the principal reason for the Commission's existence.

KRS 278.170(1), which prohibits a utility from discriminating as to rates or service, states as follows:

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 or substantially the same conditions.

Application of the above laws and regulations requires that the filed rate of LG&E must be charged Complainant, not more and not less. If it is determined that she still owes LG&E for natural gas service previously used, it must be paid. If, on the other hand, it is determined that Complainant has paid what is owed, or if she is owed credit from LG&E, she must be reimbursed by LG&E.

DISCUSSION

The Commission has reviewed the Complainant's documentation as well as that provided by LG&E, including the electric and gas bills for the service period from April 2009 through August 2011.³⁰ In order to determine the merits of Complainant's allegations against LG&E, the Commission must apply the applicable law to the relevant facts that have been presented. After reviewing Complainant's bills, LG&E's Answer, and its responses to data requests, the conclusion is that, ultimately, LG&E accurately billed the Complainant for service rendered. After reviewing the evidence, the Commission finds that the amount of \$601.19 was the amount Complainant owed for

³⁰ Copies of the bills were provided by LG&E in its September 2011 Answer.

gas service at the time the gas obligation was split from the electric obligation. LG&E transferred \$485.79 from Complainant's combined account to her Split Account for September 2009 service which represents \$610.07 for gas service and a credit of \$124.28 for electric service.³¹

A review of the Complainant's bills provides no evidence that the \$601.19 has ever been paid. LG&E added this \$601.19 amount back to the Split Account in March 2011, when it determined that the Complainant was receiving gas service. The disconnect notice of May 2, 2011 stated a balance due of \$711.65, which represents the \$844.79 bill that was mailed on April 1, 2011, minus a payment of \$140.00, plus a late payment penalty of \$6.86.³² There is no evidence that \$110.46 was erroneously added to Complainant's account.³³ Complainant's billing records from October 13, 2009 include an entry of (\$270.57) which represents the net credit that she received on the bill for September service and is not an amount due to Complainant by LG&E.

Finally, the Complainant requests that LG&E be reprimanded for disconnecting her service in April 2011 while she had an Informal Complaint before the Commission and her bill was in dispute. LG&E admits that this did occur but claims that it was a mistake and that service was disconnected at 11:30 a.m. and restored by 1:39 p.m. on

³¹ The amount of \$610.07 differs from the \$601.19 due to a charge for gas service of \$21.20 and late payment penalty of \$1.06 minus \$31.14 of a \$150.00 payment applied to the gas obligation. The Complainant received a credit for the erroneous gas charge in the bill for March 2011 service.

³² The \$844.79 bill included the \$601.19 that was added back to complainant's account.

³³ Complainant calculated the \$110.46 by taking the difference between the \$711.65 on the disconnect notice and the \$601.19, discussed previously.

the same day.³⁴ Regardless of how quickly the gas service was reinstated, LG&E did violate the following regulation:

807 KAR 5:006, Section 11, states as follows:

With respect to any billing dispute to which Section 10 of this administrative regulation does not apply, customer accounts shall be considered to be current while the dispute is pending as long as a customer continues to make undisputed payments and stays current on subsequent bills.

Although the Commission believes that LG&E has correctly stated the amount owed by Complainant, the Commission can understand why the Complainant might have believed otherwise, given the misinformation she received from an LG&E representative and the mistakes made and acknowledged by LG&E in this matter. During the course of the dispute with Complainant, LG&E failed to contact the Complainant as requested when she initially expressed interest in splitting her gas obligations from her electric obligations; mistakenly charged Complainant a gas deposit on the Split Account then credited it the following month; mistakenly charged a gas customer charge on the Split Account through March 2010 when gas service had been disconnected, then credited the charges; mistakenly informed Complainant that a payment of only \$32.06 was required to restore gas service in October 2009; mistakenly reconnected the gas service in March 2010 without acknowledging the outstanding balance; and, finally, mistakenly disconnected the Complainant in April 2011 while the informal complaint was pending.

The Commission is concerned about the number of errors made and acknowledged by LG&E in this case, which continued over a period of two years. Regardless of the nature of a customer's concerns, questions, or the status of an

³⁴ Answer at 7.

account, LG&E is expected to deal with all customers in an accurate manner. Unfortunately, this did not always occur in this case, which led to confusion and, at times, increased Complainant's difficulty in maintaining her gas and electric service.

We note here that due to the number and nature of complaints received in the most recent rate cases of LG&E and its sister company, Kentucky Utilities Company ("KU"), the Commission initiated a management audit of LG&E and KU which focused specifically on customer service issues. A final report was submitted to the Commission on November 17, 2011. As was stated on page 53 of the final report, "corporate customer service decision-making and execution must include a focus on quality and therefore the company must consider the customer needs before, during and after each contact to ensure a high level of quality service." LG&E appears to have failed to meet this standard in this case. The Commission expects LG&E to work to implement the audit recommendations and believes that LG&E should take steps to make sure that the types of errors committed in this situation are not repeated in the future.

Having considered the evidence and being otherwise sufficiently advised, the Commission finds that:

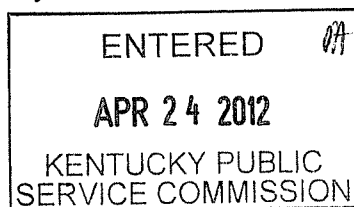
1. The Complainant owes LG&E an arrearage of \$601.19 for gas service she received prior to June 2009;
2. Complainant should be given twelve months to pay the \$601.19 arrearage;
3. LG&E's motion to dismiss this case should be granted; and
4. A separate show cause proceeding should be initiated to determine if the actions and inactions of LG&E in this matter, including, but not limited to, the shut-off of

the Complainant's electricity while the Complainant's consumer complaint was pending before the Commission, violates the orders, regulations and procedures of the Commission.


IT IS THEREFORE ORDERED that:

1. LG&E's motion to dismiss is granted.
2. Complainant owes LG&E an arrearage of \$601.19 for gas service she received prior to June 2009.
3. Complainant shall be given twelve months from the date of this Order to pay the arrearage of \$601.19.
4. A separate action shall be established for LG&E to show cause, if any, why it should not be subject to the penalties prescribed by KRS 278.990(1) for its alleged conduct in this matter.
5. Nothing in this Order shall apply to Complainant's obligation to pay for her current gas and electric service.

By the Commission



ATTEST:



Executive Director

Case No. 2011-00211

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

Brenda J Clayton
4232 Greenwood Ave
Louisville, KENTUCKY 40211-2628