



**STOLL
KEENON
OGDEN**

PLLC

2000 PNC PLAZA
500 WEST JEFFERSON STREET
LOUISVILLE, KY 40202-2828
MAIN: (502) 333-6000
FAX: (502) 333-6099

RECEIVED

DEC 4 2014

PUBLIC SERVICE
COMMISSION

W. DUNCAN CROSBY III

DIRECT DIAL: (502) 560-4263

DIRECT FAX: (502) 627-8754

duncan.crosby@skofirm.com

December 4, 2014

VIA HAND-DELIVERY

Jeff DeRouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

**RE: *Hart County Bank and Trust Company v. Kentucky Utilities Company*
Case No. 2014-00331**

Dear Mr. DeRouen:

Enclosed please find and accept for filing the original and ten copies of Kentucky Utilities Company's Reply to Complainant's Response to Defendant's Motion to Dismiss in the above-referenced matter. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copies and return them to me via our office courier.

Should you have any questions please contact me at your convenience

Sincerely,

W. Duncan Crosby III

WDC:ec

Enclosures

cc: J.D. Craddock III, Esq.

400001.150114/1162753.1

RECEIVED

DEC 4 2014

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

HART COUNTY BANK AND TRUST COMPANY,)
)
COMPLAINANT)
)
v.)
)
KENTUCKY UTILITIES COMPANY,)
)
DEFENDANT)

CASE NO. 2014-00331

**REPLY TO COMPLAINANT'S
RESPONSE TO DEFENDANT'S MOTION TO DISMISS**

Kentucky Utilities Company ("KU" or the "Company"), by counsel, submits this Reply to Hart County Bank and Trust Company's ("Bank") Response to Defendant's Motion to Dismiss. The Kentucky Public Service Commission's ("Commission") October 20, 2014, Order in this proceeding required the Bank to file its response to KU's Motion to Dismiss no later than October 27, 2014. Four weeks after the Commission's deadline, the Bank submitted its response on November 21, 2014 without stating a cause for the out-of-time filing. The Bank is a sophisticated commercial customer with over \$27 million in total assets,¹ and is represented by counsel with over 45 years of experience; it is not a *pro se* residential customer who may not fully understand the necessity of complying with the Commission's orders. Although KU is uncertain whether the Commission will grant the Bank's untimely motion, the following reply is submitted should the Commission do so.

¹ Assets according to the FDIC as of September 30, 2014. See https://www2.fdic.gov/idasp/confirmation_outside.asp?inCert1=10145.

REPLY TO BANK'S RESPONSE TO KU'S MOTION TO DISMISS

Without any legal authority, the Bank asserts KU is responsible to ensure that each customer is on the most financially advantageous rate schedule.² The Bank's argument is in direct conflict with well-established law holding that a utility has no duty to ensure its customers are on the most favorable rate when optional rate schedules are available.³ KU does have a tariff-defined responsibility to ensure its customers are on rate schedules for which they are eligible. Notably, the Bank has not asserted in its Response or elsewhere that KU failed to serve the Bank under such a rate schedule; indeed, the Bank could not make such an assertion because at all relevant times the Bank has been on a rate schedule for which it was eligible.

Relatedly, the Bank contends that a customer's responsibility to choose between optional rates would require KU customers to ensure each month they are on the most financially advantageous rate option.⁴ That assertion is incorrect for two reasons: (1) because KU has cost-of-service-based rates, few KU customers have rate options; and (2) KU does not change its rate options on a monthly basis, and any such rate change would have to be approved by the Commission in a public proceeding with reasonable notice to customers.⁵

Moreover, the Bank's Response does not address the Commission's final order in Case No. 2005-00012, in which the Commission dismissed with prejudice a complaint in all material respects identical to the Bank's and held, "KU was not under an affirmative duty to inform its

² See Response to Defendant's Motion to Dismiss at 2.

³ See Motion to Dismiss at 9-10. See also *Southeastern Land Co. v. Louisville Gas & Electric Co.*, 90 S.W.2d 1 (Ky. 1936), quoting *Spear & Co. v. Public Service Commission*, 161 A. 441 (Pa. Super. Ct. 1932) ("Complainant contends further that if optional rates are proper, it is the duty of the company to calculate which will be the cheapest for each consumer and to bill him upon that basis. In practice such a procedure would be well nigh impossible. A utility had the duty to make proper classifications of its service and to prescribe rates accordingly, but having done this and having made all proper information available to its patrons, its obligation has been met.").

⁴ See Response to Defendant's Motion to Dismiss at 2.

⁵ KRS 278.190(1).

customers of the most advantageous rate for the customers.”⁶ The Bank’s Response also does not show how KU may deviate from its Commission-approved tariff without violating KRS 278.160 and the bedrock of utility law, the filed-rate doctrine, which “demands that a utility strictly adhere to its published rate schedules and not, either by agreement or conduct, depart from them.”⁷

The Bank’s Response similarly alleges without support that statements in KU’s Motion to Dismiss “directly and blatantly violate [KRS 278.170(1)].”⁸ The Bank neither specifies the supposedly offending statements, nor does the Bank explain how statements in a motion could violate a statute proscribing rate discrimination within rate classes. The Commission has approved KU’s tariff in its entirety in all three of its most recent rate cases, approvals the Commission would not have granted were KU’s tariff inconsistent with any portion of KRS Chapter 278 or the Commission’s applicable regulations.

The Bank further claims that KU’s rate-case notices and tariff communicate to its customers “[n]o understandable information regarding KU’s rates.”⁹ But the Commission’s repeated approvals of KU’s tariff, notices, and bill format conclusively demonstrate otherwise. Moreover, KU’s monthly billings routinely urge customers to call KU and request additional explanation and assistance with any aspect of their bill.

For these reasons, Kentucky Utilities Company respectfully requests that the Commission deny Hart County Bank and Trust Company’s Motion to File a Late Response to Defendant’s Motion to Dismiss and grant the Company’s Motion to Dismiss.

⁶ See Motion to Dismiss at 4, 10-11. See also *In the Matter of Michael Hunter d/b/a M.H. Rehab v. Kentucky Utilities Company*, Case No. 2005-00012, Order at 3 (Oct. 12, 2006).

⁷ See Motion to Dismiss at 1-2. See also *In the Matter of North Marshall Water District*, Case No. 95-107, Order at 2 (Ky. PSC Oct. 13, 1995).

⁸ See Response to Defendant’s Motion to Dismiss at 2.

⁹ *Id.* at 4.

Dated: December 4, 2014

Respectfully submitted,



Kendrick R. Riggs
W. Duncan Crosby III
Joseph T. Mandlehr
Stoll Keenon Ogden PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202-2828
Telephone: (502) 333-6000
Facsimile: (502) 333-6099
kendrick.riggs@skofirm.com
duncan.crosby@skofirm.com
joseph.mandlehr@skofirm.com

Allyson K. Sturgeon
Senior Corporate Attorney
LG&E and KU Services Company
220 West Main Street
Louisville, Kentucky 40202
Telephone: (502) 627-2088
Facsimile: (502) 627-3367
allyson.sturgeon@lge-ku.com

Counsel for Kentucky Utilities Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Objection and Reply was served on the following on the 4th day of December 2014, by U.S. mail, postage prepaid to the following:

J.D. Craddock III
Attorney at Law
P.O. Box 335
Munfordville, Kentucky 42765



Counsel for Kentucky Utilities Company