

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

HART COUNTY BANK AND TRUST COMPANY)	
)	
COMPLAINANT)	
V.)	CASE NO.
)	2014-00331
KENTUCKY UTILITIES COMPANY)	
)	
DEFENDANT)	
)	

ORDER

On September 15, 2014, Complainant, Hart County Bank and Trust Company (“Complainant”) tendered a formal complaint to the Commission. Complainant asserted that it never received notice from its electric utility provider, Kentucky Utilities Company (“KU”), regarding a change in rates that made the General Service (“GS”) rate schedule more attractive than the Power Service (“PS”) schedule upon which Complainant was receiving service at that time. Complainant states that it, therefore, paid an unnecessarily higher rate between February 6, 2009, when the new rate schedules became effective, and May 8, 2014, when Complainant switched rates.

Complainant states that it requested KU refund the difference between the GS and PS rates; however, KU declined to issue a refund. Complainant argues that had it received notice of the rate change that made the GS rate financially preferable, it would have elected the lower rate. Complainant also contends that KU should have automatically switched Complainant to the GS schedule subsequent to the rate increase.

On September 24, 2014, the Commission issued an Order directing KU to either satisfy the complaint or to answer the allegations. KU states in its answer and motion to dismiss, filed on October 6, 2014, that it properly published notice of the rate adjustment in Case No. 2008-00251,¹ and that it further included bill inserts in November and December of 2010 notifying customers of the potential benefits of switching to the GS rate. KU argues that Complainant has not presented a claim upon which the Commission may grant the relief requested as such a result would violate the filed rate doctrine in that a refund would be in contradiction to the terms of KU's tariff. KU's tariff contains language that explicitly states:

If two or more rate schedules are available for the same class of service, it is Customer's responsibility to determine the options available and to designate the schedule under which customer desires to receive service.

...

In no event will Company make refunds covering the difference between the charges under the rate in effect and those under any other rate applicable to the same class of service.²

Therefore, KU argues that the complaint should be dismissed.

Pursuant to 807 KAR 5:001, Section 5(2), "a party to a case shall file a response to a motion no later than seven (7) days from the date of filing of a motion." Due to Complainant having not filed a timely response as of October 20, 2014, the Commission ordered Complainant to submit a response to KU's motion to dismiss within seven days of the Order's date. Complainant failed to submit a response until November 24, 2014.

¹ Case No. 2008-00251, *Application of Kentucky Utilities Company for an Adjustment of Electric Base Rates* (filed Sept. 12, 2008).

² KU tariff, effective Aug. 1, 2010, P.S.C. No. 16, Original Sheets No. 97 and 97.1.

With its response, Complainant included a tendered Order to accept its late filing; however, Complainant otherwise ignored the tardiness of its response, which was received nearly two months after KU submitted its motion to dismiss. In its response, Complainant argues that if the burden to choose the appropriate rate was placed upon the ratepayer, it would require the ratepayers to research the best rate on a monthly basis. Complainant posits that KU knowingly charges higher rates and later asserts its inability to refund alleged overpayments. Finally, Complainant contends that the format of the public notice utilized by KU to inform ratepayers of rate applications is confusing and unintelligible.

KU submitted a timely reply on December 4, 2014, in which it first argues that Complainant is a sophisticated commercial customer and noted that Complainant failed to cite any cause for filing its response four weeks late. However, KU does not explicitly argue against accepting Complainant's late response. Turning to the substance of Complainant's response, KU asserts that Complainant is mistaken in its belief that there would be a need to examine the best rate on a monthly basis. KU notes that it does not change its rates on a monthly basis and rates are altered only upon the Commission's approval.

This matter having been fully briefed now stands ripe for adjudication.

A motion to dismiss should not be granted "unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim."³ In reaching a decision, no factual determinations are required, "rather, the

³ *Pari-Mutuel Clerks' Union v. Kentucky Jockey Club*, 551 S.W.2d 801, 803 (Ky. 1977).

question is purely a matter of law.”⁴ In reviewing the motion, every allegation in the complaint must be taken as being true and the allegations must be construed in the light most favorable to the nonmoving party.⁵

The Commission first finds that Complainant failed to comply with 807 KAR 5:001, Section 5(2), and the Commission’s October 20, 2014 Order by not filing a response to KU’s motion to dismiss within the requisite time frames. Additionally, Complainant did not provide any explanation for the failures to timely file a response. However, KU did not unambiguously argue against Complainant’s motion to submit a late response. Accordingly, the Commission finds that Complainant’s motion to file a late response should be granted, its response accepted for filing, and this matter be adjudicated fully on the merits of the claims.

As to the underlying merits of its complaint, Complainant has alleged that it did not receive a letter sent by KU explicitly notifying Complainant of the rate change and the possibility that the PS rate was no longer the most financially sound rate. However, KU was under no obligation to send such a letter. A customer is only entitled to a mailed written notice of an application to increase rates when that customer is served by a utility with fewer than 20 customers.⁶ Utilities serving more than 20 customers may, but are not required to, provide individual notices of rate increases.⁷

KU was instead required, at the time it filed its rate application, to publish in a newspaper for at least three consecutive weeks a notice that it was filing a rate

⁴ *Bagby v. Koch*, 98 S.W.3d 521, 522 (Ky. App. 2002).

⁵ *Scearse v. Lewis*, 43 S.W.3d 287, 288-89 (Ky. App. 2001).

⁶ 807 KAR 5:001, Section 17(2)(a).

⁷ 807 KAR 5:001, Section 17(2)(b)(2).

application.⁸ KU did, in fact, provide such notice via publication and voluntarily exceeded the minimum requirement through publishing notice for six weeks.⁹

The Commission has promulgated regulations regarding the specific language and contents that are required in a notice.¹⁰ The notice must include the proposed effective date, present rates, proposed rates, and amount of the change.¹¹ There is no requirement that the utility explicitly state that the rate increase may cause a customer's current rate to no longer be the most cost-effective rate for that customer.

Despite Complainant's protestations regarding the format of the notice, KU complied with the Commission's regulations on notice requirements in Case No. 2008-00251 regarding the requested rate increase.¹² Complainant has not come forth with any basis for imposing an affirmative obligation upon KU to either notify its ratepayers that a different rate may become more financially attractive subsequent to a rate increase or to require the utility to automatically switch the customer to a different rate.

Ratepayers are free to investigate and apply for service under any rate for which they may be eligible to receive service. However, it would be unduly burdensome and unworkable to require a utility to independently investigate whether to switch a customer to a different rate schedule subsequent to a rate adjustment. Although Complainant contends that rate increases are imposed automatically, rate increases are in actuality

⁸ 807 KAR 5:001, Section 17(2)(b)(3).

⁹ Motion to Dismiss for Failure to State a Claim Upon Which Relief can be Granted and Answer of Kentucky Utilities Company (filed Dec. 4, 2014) at 5.

¹⁰ 807 KAR 5:001, Section 17(4).

¹¹ *Id.*

¹² Case No. 2008-00251, *Application of Kentucky Utilities Company for an Adjustment of Electric Base Rates* (filed Sept. 12, 2008).

the result of a Commission Order authorizing a request to adjust rates and are generally applied broadly across rate classes. Such increases do not require examination into specific customer usage patterns. KU's tariff clearly places the burden on customers to determine which rate schedule is best for their individual needs.¹³ There is no basis to shift the burden of determining each respective customers' optimal rate from the customer to KU.

Finally, KU billed Complainant in accordance with the rate schedule under which Complainant was receiving service. Both KU's tariff and the filed rate doctrine, codified in KRS 278.160, preclude providing a refund to Complainant. KRS 278.160(2) states:

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 a compensation greater or less than that prescribed in such schedules.

In interpreting KRS 278.160, the Commission has held that the legislature intentionally crafted a "hard and fast rule which must be applied in all cases."¹⁴ The filed rate doctrine precludes a utility from departing from its published rate schedules and, therefore, KU may not voluntarily depart from its schedules so as to provide a refund.¹⁵ In addition to the requirement to adhere to its filed rate schedules, KU is precluded by KRS 278.170(1) from offering a discount, rebate, refund, or other discriminatory rate preference to any person.

¹³ See, *supra*, fn 2.

¹⁴ Case No. 95-517, *Leslie County Telephone Company, Inc. Investigation into the Alleged Violations of KRS 278.160* (Ky. PSC June 21, 1996) (emphasis in original).

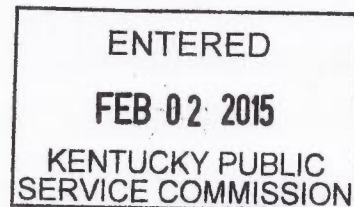
¹⁵ See, e.g., *Id.*

Complainant's request for a refund based upon a rate upon which it was not receiving service would amount to an unlawful departure from the filed rate doctrine in KRS 278.160, and would unreasonably disadvantage other ratepayers in violation of KRS 278.170(1). Accordingly, the Commission finds that Complainant has failed to present a claim upon which relief may be granted and, for that reason, KU's motion to dismiss should be granted.

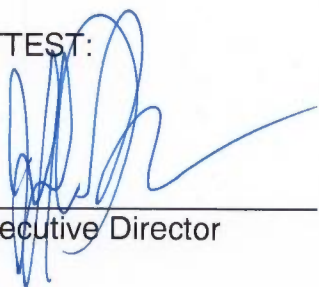
IT IS THEREFORE ORDERED that:

1. Complainant's motion to submit a late response is granted and its response to KU's motion to dismiss is accepted for filing.
2. KU's motion to dismiss is granted.
3. This matter is dismissed with prejudice and is removed from the Commission's docket.

By the Commission



ATTEST:



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