

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|----------------------------|---|------------|
| CHARLENE MARIE WYATT |) | |
| |) | |
| COMPLAINANT |) | |
| V. |) | CASE NO. |
| |) | 2015-00309 |
| DUKE ENERGY KENTUCKY, INC. |) | |
| |) | |
| DEFENDANT |) | |

ORDER

On September 4, 2015, Charlene Marie Wyatt (“Complainant”) filed with the Commission a formal complaint against Duke Energy Kentucky, Inc. (“Duke Energy”) alleging that Duke Energy was incorrectly billing her for unbilled charges of \$910.80. Complainant denied that she owed anything for unbilled charges, requested that the Commission investigate the matter, and for the pendency of the complaint, prohibit Duke Energy from collecting the balance for unbilled charges or assessing late charges or disconnection fees. Complainant also requested damages for expenses allegedly incurred due to Duke Energy’s attempts to collect the unbilled charges.

In its September 17, 2015 Order, the Commission directed Duke Energy to answer or satisfy the complaint. Duke Energy filed its answer and motion to dismiss on September 29, 2015. Duke Energy asserted that Complainant owed \$910.80 for unbilled charges because her meter had been inadvertently switched with that of a neighboring condominium unit owner, and that she had thus been paying an incorrect

amount over a period of months. Duke Energy, asserting that it properly billed Complainant, moved the Commission to dismiss the Complaint.

BACKGROUND

Complainant asserts that her electric service was disconnected on March 30, 2015, while she was at work. Duke Energy restored service after she contacted Duke Energy. Complainant asserts that her April bill for electric service contained the normal monthly bill and an additional \$910.80 charge. Complainant argues that she should not be responsible for the additional charges Duke Energy added to her bill. She requests that the Commission order Duke Energy to refund any payments she has made to the \$910.80 balance and dismiss any remaining balance.¹ Complainant further requests compensation for damage that she alleges occurred to her air conditioning unit and several appliances when Duke Energy inadvertently disconnected her power.² Complainant also alleges that stress from dealing with Duke Energy and the high bill has caused her health issues, resulting in medical expenses.³ Complainant requests that the Commission order Duke Energy to reimburse her for medical expenses as well as for the costs of replacing Complainant's air conditioning unit and appliances.⁴

Duke Energy states that on March 30, 2015, it responded to a request from another customer in Complainant's condominium complex, unit 302, to cancel service by sealing the meter. Complainant resides in unit 101. When Complainant alerted Duke Energy that her service had been disconnected, Duke Energy discovered that the

¹ Complainant's Response to Duke Energy's Answer and Motion to Dismiss at page 8.

² *Id.* at 4.

³ *Id.* at 4–5.

⁴ *Id.* at 8.

electric meter assigned to the neighbor's unit, 302, was connected to and registering electric use at Complainant's unit, 101. Duke Energy also discovered that Complainant's meter registered the consumption for unit 302. Duke Energy concluded that the two meters either were incorrectly assigned in its billing system or had been physically switched at some point. As a result, when Duke Energy sealed the meter for unit 302, it disconnected Complainant's service, which it restored upon Complainant's call.

Duke Energy admits that on or about April 7, 2015, it issued an adjusted bill of \$910.80 to Complainant, which included rebilled service from March 7, 2014, through March 7, 2015. Duke Energy asserts that the switching of the meters resulted in Complainant's being incorrectly billed for consumption at unit 302 and the unit 302 customers' being billed for Complainant's consumption. Duke Energy states that it made the necessary changes to both accounts to reflect the correct consumption for both meters. Duke Energy asserts that the switched meters resulted in Complainant's being under-billed for service for a one-year period, and the customers in unit 302 being over-billed by the same amount. Duke Energy also credited the customers in unit 302 for the amount that they had been over-billed.

Complainant contacted Duke Energy several times after receiving the corrected bill, protesting the bill each time.⁵ Duke Energy claims that it explained the nature of the balance owed and offered a payment arrangement to divide payment of the balance over several months.⁶ Complainant also contacted the Better Business Bureau about

⁵ Duke Energy's Response to Commission Staff's Initial Request for Information ("Staff's First Request"), Item 4.

⁶ *Id.*

her bill, to which Duke Energy responded with copies of Complainant's bills and an explanation of Complainant's bill. Eventually, on August 27, 2015, Complainant consented to a ten-month payment arrangement for \$96.00 a month beginning with the September 4, 2015 bill.

Duke Energy states that it tested the meter from unit 101 on May 29, 2015. The test showed that the meter was working accurately.⁷ Duke Energy informed Complainant of the results of the meter test. A previous test of the meter in 2005 yielded similar results.⁸

DISCUSSION

Complainant requests two forms of relief: 1) reimbursement for expenses incurred due to switching of the meters; and, 2) cancellation of the \$910.80 balance and a refund of the amounts she has paid towards it. For the reasons discussed below, the Commission cannot grant relief on either issue.

With regard to the request for payment for medical expenses as well as for damaged or destroyed appliances, the Commission is without the jurisdiction to offer that relief. The Commission does not have the authority to award damages. In *Carr v. Cincinnati Bell, Inc.*, ("*Carr*"),⁹ a customer brought an action in Kenton Circuit Court seeking, among other things, compensatory damages for tortious breach of contract for telephone service. Holding that the Commission had exclusive jurisdiction over the

⁷ *Id.*

⁸ Duke Energy's response to Staff's First Request, Item 5.

⁹ 651 S.W. 2d 126 (Ky. App. 1983).

matter, Kenton Circuit Court dismissed the suit. Reversing the circuit court's opinion on this issue, the Court of Appeals said:

[A]ppellant seeks damages for breach of contract. Nowhere in Chapter 278 do we find a delegation of power to the PSC to adjudicate contract claims for unliquidated damages. Nor would it be reasonable to infer that the Commission is so empowered or equipped to handle such claims consistent with constitutional requirement. Kentucky Constitution Sec. 14.¹⁰

Thus, the Commission has jurisdiction only over Complainant's request relating to the \$910.80 balance.

With regard to the previously unbilled service, the evidence of record supports Duke Energy's contention that Complainant is liable for the \$910.80 balance that was erroneously billed to unit 302 rather than Complainant. It is unfortunate that either the meters were physically switched or that Duke Energy did not have the meters properly recorded in its system; however, the record reflects that Duke Energy did accurately record Complainant's consumption, but that it billed the incorrect customer.

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."¹¹ It further 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.¹²

¹⁰ *Id.* at 128.

¹¹ KRS 278.160(1).

¹² KRS 278.160(2).

The primary effect of KRS 278.160 is to bestow upon a utility's filed rate schedule the status of law from which the utility cannot deviate. A utility may implement a new rate, but until such time, it cannot deviate from its filed rate schedule. For this reason, neither equitable considerations (such as a switched meter) nor a utility's negligence may serve as a basis for departing from filed rate schedules.¹³ Therefore, even if Duke Energy was negligent in not properly billing Complainant, it still must charge her for the service that she received. Otherwise, she would be receiving service at a discounted price, a result which the filed rate doctrine prohibits.¹⁴

CONCLUSION

As discussed above, the Commission lacks the jurisdiction to grant relief for any alleged damages that Complainant requests. Moreover, the evidence reflects that Duke Energy properly back-billed Complainant for consumption.

During the course of the case the Commission reviewed several of Duke Energy's practices including: Duke Energy's meter-testing protocol; the meter-test history for Complainant's meter; Duke Energy's electric facilities inspection practices; and Duke Energy's practices for placing multiple meters in a cabinet, such as in an apartment complex. All of the practices reviewed by the Commission were in compliance with our regulations. The Commission also confirmed that the over-billed customers from unit 302 received billing credits for the amount of the over-billing, thus ensuring that Duke Energy did not over-recover for service it had provided.

¹³ *Boone County Sand and Gravel Co. v. Owen County RECC*, 779 S.W.2d 224 (Ky. App. 1989).

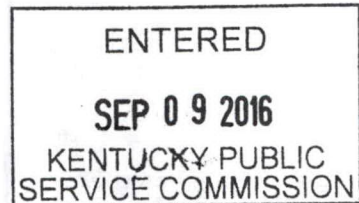
¹⁴ The record reflects that the customers from unit 302 who were overbilled for Complainant's service received a bill credit, ensuring that Duke Energy properly billed them for the service they rendered to the customers in unit 302.

Based upon the foregoing, Complainant is responsible for the \$910.80 balance and her complaint should be dismissed.

IT IS THEREFORE ORDERED that:

1. The September 4, 2015 complaint filed against Duke Energy is dismissed with prejudice.
2. This case is closed and removed from the Commission's docket.

By the Commission



ATTEST:


Executive Director

Charlene M Wyatt
1804 Ashley Ct., Unit 101
Florence, KENTUCKY 41042

*Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45202

*Duke Energy Kentucky, Inc.
Duke Energy Kentucky, Inc.
139 East Fourth Street
Cincinnati, OH 45202