

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of:

Douglas and Sylvia Morrison)
)
)
Complainants)
v.)
)
Kentucky Power Company)
)
)
Defendant)

Case No. 2015-00136

Amended Answer of Kentucky Power Company

Kentucky Power Company for its amended answer to the complaint of Douglas and Sylvia Morrison states:

First Defense

1. Kentucky Power denies it acted fraudulently, or with intent to mislead or deceive the Complainants, or their predecessors at 440 31st Street, Ashland, Kentucky, with respect to the matters alleged in the Complaint.

Second Defense

2. The Complainants' claims are barred by KRS 278.160 and the Filed Rate Doctrine.

Third Defense

3. The Complainants' claims are barred in whole or part by the applicable statutes of limitations.

Fourth Defense

4. The Complainants lack standing to assert claims other than their own, including the claims, if any, of prior residents of 440 31st Street.

Fifth Defense

5. Kentucky Power admits as follows:

(a) Combination electric/outdoor lighting service was established at 440 31st Street, Ashland, Kentucky on or about December 20, 1994 in the name of Leodia Easterling. The outdoor lighting portion of such service is unmetered.

(b) Combination electric/outdoor lighting service was established at 440 31st Street, Ashland, Kentucky on or about April 9, 1996 in the name of Douglas Morrison. The outdoor lighting portion of such service is unmetered.

(c) Kentucky Power has no records, or other information, indicating it installed or maintained the lamp on the Complainant's outbuilding. During all times relevant to the matters alleged in the complaint, installation or servicing by the Company of a dusk-to-dawn lamp (the type of service for which the Complainants were billed) on a customer's building would have been contrary to Company practice.

(d) Based on statements made by Ms. Morrison, the lamp installed on the Complainants' outbuilding is connected to the customers' side of the meter. During all times relevant to the matters alleged in the complaint, installation or servicing by the Company of a dusk-to-dawn lamp (the type of service for which the Complainants were billed) on the customers' side of the meter would have been contrary to Company practice.

(e) Upon information and belief, the lamp installed on the outbuilding on the Complainants' property appears to be a mercury-vapor lamp.

(f) The dusk-to-dawn light that is the subject of the Complainants' claim is mounted on Kentucky Power Pole No. 2184. Kentucky Power's records indicate that Pole No. 2184 was installed in 1968. Pole No. 2184 is located on the south side of an alley way abutting the residence located at 440 31st Street, Ashland, Kentucky. It is not uncommon for the Company to install dusk-to-dawn lamps on poles located in its easements or rights-of-way on the property of persons other than the customer subscribing to dusk-to-dawn lamp service.

(g) The Company's records indicate the dusk-to-dawn lamp formerly installed on Kentucky Power Pole No. 2184 that is the subject of the Morrisons' complaint was installed on April 7, 1992. The lamp formerly installed on Pole No. 2184 was a high pressure sodium lamp. The high pressure sodium lamp shown affixed to Kentucky Power Pole No. 2184 is not identical to what appears, upon information and belief, to be a mercury-vapor lamp attached the Complainants' outbuilding.

(h) Currently, and at the time Ms. Easterling and Mr. Morrison established service at 440 31st Street, Ashland, Kentucky, it was Kentucky Power's practice to confirm with the person establishing service at a residence with an existing associated dusk-to-dawn lamp if the new customer wished to continue the dusk-to-dawn lamp service. Such service would have been continued only if the customer agreed.

(i) Kentucky Power's records indicate that the accounts of Ms. Easterling and the Complainants were established as combination electric/outdoor light accounts.

(j) Because of the amount of time since Ms. Easterling and Mr. Morrison established service at 440 31st Street, Ashland, Kentucky, Kentucky Power's currently available records are limited.

(k) Kentucky Power Pole No. 2182 is shown in the foreground of the photograph on page 13 of the complaint. It is located diagonally across 31st Street from the Complainants' residence. The Company's records indicate Pole No. 2182 was installed in 1968. The Company's records do not reflect the installation by Kentucky Power of any type of lighting fixture on Pole No. 2182.

(l) The rearmost pole shown on page 13 of the Complaint is Kentucky Power Pole No. 2181. The Company's records indicate Pole No. 2181 was installed in 1974. The Company's records do not reflect the installation by Kentucky Power of any type of lighting fixture on Kentucky Power Pole No. 2181. The brush shown on Kentucky Power Pole No. 2181 is in the vicinity of the telephone lines and not the Company's lines.

(m) The leftmost pole shown on page 14 of the complaint does not bear a Kentucky Power pole number and is not a Kentucky Power pole. It appears to be used to provide telecommunications service. Kentucky Power's records do not reflect that Kentucky Power has ever attached any type of lighting fixture to the unnumbered leftmost pole shown in the photograph on page 14 of the Complaint.

(n) The rightmost pole shown on page 14 of the complaint is Kentucky Power Pole No. 2184 and described in more detail in paragraphs 5(f) and 5(g) of this amended answer.

(o) The poles shown in the photograph on page 15 of the complaint are the unnumbered pole that is not owned by Kentucky Power (leftmost pole in the photograph) and Kentucky Power Pole No. 2184 (rightmost pole in the picture).

(p) When the Company's service technician, Kevin Brown, viewed the lamp affixed to the Complainants' outbuilding on March 26, 2015 he noted a blue-colored extension cord running from the Complainants' residence to the lamp affixed to the outbuilding. The cord exited the residence and was affixed to the back of the Complainants' residence. The cord spanned the distance between the residence and outbuilding at a height of approximately eight feet. As viewed by Mr. Brown, the cord entered the outbuilding and then exited the outbuilding and ran up the arm of the lamp affixed to the outbuilding. Such an installation is not provided by the Company.

Sixth Defense

6. Kentucky Power denies all allegations of the complaint that are inconsistent with the admissions set forth in paragraph 5 of this amended answer.

Seventh Defense

7. In response to the first paragraph of the complaint ("I transferred my electric account ...") Kentucky Power:

(a) Admits so much of the first paragraph of the complaint that alleges service at 440 31st Street, Ashland, Kentucky was established on or about April 9, 1996 in the name of Douglas Morrison. Kentucky Power further admits that service at the same address in the name of Leodia Easterling was established on or about December 20, 1994.

(b) Kentucky Power admits its records reflect only two repair calls with respect to the dusk to dawn lamp service associated with the account for service to 440 31st Street, Ashland, Kentucky. The first repair call was dated May 2012 and was cancelled for unspecified reasons. The second repair call, dated March 25, 2015, was cancelled by Kentucky Power upon discovering that the complainants were seeking service with respect to a lamp not owned or maintained by Kentucky Power over the outbuilding in the rear of their residence.

(c) Kentucky Power is without information sufficient to admit or deny the remaining allegations contained in the first paragraph of the complaint and therefore denies the same.

8. Kentucky Power is without information sufficient to admit or deny the allegations contained in the second paragraph of the complaint (“When we had high winds...”) and therefore denies the same, except that it admits its records reflect a repair call with respect to the dusk-to-dawn light on Kentucky Power Pole No. 2184 was received on or about March 25, 2015 as described above. That repair call was canceled upon learning that the customer was seeking service of the lamp affixed to the customer was not seeking service of the dusk-to-dawn lamp affixed to Kentucky Power Pole No. 2184, but instead seeking service of the lamp attached to the customer’s outbuilding.

9. In response to the third paragraph of the complaint (“Thurs. 3/26/2015 ...”) Kentucky Power:

(a) Admits Kevin Brown, a Company service technician, was dispatched to repair the dusk-to-dawn affixed to Kentucky Power Pole No. 2184.

(b) Admits that Mr. Brown informed the Complainants that the lamp affixed to the outbuilding at their residence was not the dusk-to-dawn lamp for which they were being billed.

(c) Admits that Mr. Brown informed the Complainants that the dusk-to-dawn lamp for which they were being billed was affixed to the pole across the alleyway, but denies he stated it was located on their neighbor's property.

(d) Admits that Mr. Brown explained that the lamp affixed to their outbuilding was metered.

(e) Denies that its records reflect any efforts by the Complainants (or others) prior to March 2015 to have the dusk-to-dawn light installed on Kentucky Power Pole No. 2184 removed.

10. In response to the fourth paragraph of the complaint ("The driver said ...")
Kentucky Power:

(a) Admits that the Complainants became agitated and that Mr. Brown informed them he would inform his supervisor of their concerns.

(b) Admits that Mr. Brown did not argue with the Complainants and instead left their residence.

11. In response to the allegations of the fifth paragraph of the complaint ("My nephew...") Kentucky Power:

(a) Kentucky Power admits that its records do not show electric service of any type being provided by Kentucky Power to 3200 Roberts Drive, Ashland, Kentucky.

(b) Kentucky Power further states that although its records indicate electric service is being provided to George (not Tony) Morrison at 3022 (not 3200) Roberts Drive, no dusk-to-dawn lamp service is being provided by the Company to that address.

(c) Kentucky Power admits that there appears to be a non-company owned lamp affixed to the outbuilding located at 3022 Roberts Drive, Ashland, Kentucky.

(d) Kentucky Power is without information sufficient to admit or deny the remaining allegations contained in the paragraph and therefore denies the same.

12. Kentucky Power admits the allegations contained in the sixth paragraph of the complaint (“A lady at AEP...”).

13. In response to the seventh paragraph of the complaint (“So I hung up...”) Kentucky Power:

(a) Admits that Debra L. Kahn of Kentucky Power contacted Ms. Morrison by telephone on March 26, 2015 to discuss her inquiry regarding the dusk-to-dawn lamp on Kentucky Power No. 2184.

(b) Kentucky Power admits that Ms. Kahn informed Ms. Morrison that the account was being billed for a dusk-to-dawn lamp affixed to Kentucky Power Pole No. 2184.

(c) Kentucky Power admits that Ms. Kahn informed Ms. Morrison that she would travel to the Morrison's residence on March 30, 2014 to meet with the Complainants, and that the Morrisons were being billed for dusk-to-dawn lamp service.

(d) The Company is without information sufficient to admit or deny the allegation concerning the identified call by Ms. Morrison to the Public Service Commission.

(e) Kentucky Power denies Ms. Kahn ever stated that the Company installed the lamp affixed to the outbuilding at 440 31st Street, Ashland, Kentucky.

(f) Kentucky Power admits the remaining statements identified in the paragraph were made by Ms. Morrison but not the truth of the matters stated by Ms. Morrison.

14. In response to the eight paragraph of the complaint ("Friday March 27, 2015 ...")
Kentucky Power:

(a) Kentucky Power denies so much of the eighth paragraph of the complaint as is inconsistent with the statements made by the Company in paragraph 11 of this amended answer.

(b) Is without information sufficient to admit or deny the remaining allegations contained in the paragraph and therefore denies the same, except that, upon information and belief, Kentucky Power denies that the lamp affixed to the Complainants' outbuilding is a high-pressure sodium lamp.

15. Kentucky Power is without information sufficient to admit or deny the allegations contained in the ninth paragraph of the complaint (“The guy at Mueller’s said ...”) and therefore denies the same.

16. In response to the tenth paragraph of the complaint (“Monday March 30, 2015...”) Kentucky Power:

(a) Admits Ms. Kahn met with the Complainants on March 30, 2015, and that she explained the dusk-to-dawn service associated with her residence was being provided by means of the lamp affixed to Kentucky Power Pole No. 2184.

(b) Admits that Ms. Kahn informed Ms. Morrison that the dusk-to-dawn lamp located on Kentucky Power Pole No. 2184 was being billed to the account for service at 440 31st Street, Ashland, Kentucky.

(c) Kentucky Power further states that its records do not indicate any work orders relating to the relocation of any dusk-to dawn lamps in the vicinity of the Complainants’ residence at 440 31st Street, Ashland, Kentucky prior to the work order that resulted in the removal of the dusk-to-dawn lamp on Kentucky Power Pole No. 2184 at the request of the Complainants in April 2015.

(d) Kentucky Power refers to its statements in paragraph 5 of this amended answer and denies all allegations in the tenth paragraph of the complaint inconsistent therewith.

(e) Kentucky Power is without information sufficient to admit or deny the remaining allegations contained in the tenth paragraph of the complaint and therefore denies the same.

17. Kentucky Power admits the allegations contained in the eleventh paragraph of the complaint (“Debbie looked down the alley”)

18. In response to the twelfth paragraph of the complaint (“I took her back ...”) Kentucky Power

(a) Refers to its statements in paragraph 5 of this amended answer and denies all allegations inconsistent therewith.

(b) Kentucky Power denies so much of the paragraph as alleges Ms. Kahn had not previously examined the lamp affixed to the outbuilding located at 440 31st Street, Ashland, Kentucky.

(c) Kentucky Power denies that during the period Ms. Easterling received service from the Company at 440 31st Street, or during the period that the Complainants received service from the Company at the same address, that it was the Company’s practice to install or service outdoor lighting fixtures on customers’ outbuildings.

(d) Kentucky Power admits that the remaining statements in the paragraph were made.

19. In response to the thirteenth paragraph of the complaint (“Debbie said sometimes ...”) Kentucky Power:

(a) Admits so much of the paragraph as alleges Ms. Kahn stated replacement parts for what appeared to be the mercury-vapor lamp affixed to the Complainants’ outbuilding might be available from salvage yards.

(b) Is without information sufficient to admit or deny the remaining allegations and therefore denies the same.

20. In response to the fourteenth paragraph of the complaint (“Debbie says AEP records ...”):

(a) Kentucky Power admits Ms. Kahn informed Ms. Morrison that the Company’s records indicate the Complainants established service at 440 31st Street, Ashland, Kentucky in December 1996.

(b) Kentucky Power refers to its statements in paragraph 5 of this amended answer and denies all allegations of the fourteenth paragraph inconsistent therewith.

(c) Kentucky Power is without information sufficient to admit or deny the remaining allegations of fourteenth paragraph of the complaint and therefore denies the same.

21. In response to the fifteenth paragraph of the complaint (“Again Debbie asked...”):

(a) Kentucky Power denies that it fraudulently or otherwise improperly charged the Complainants for the dusk-to-dawn lamp formerly located on Kentucky Power Pole No. 2184.

(b) Kentucky Power admits so much of the paragraph as alleges the Complainants requested a refund of all charges for the dusk-to-dawn lamp and that the Company denied the request.

(c) Kentucky Power admits that the Complainants requested that the dusk-to-dawn lamp on Kentucky Power Pole No. 2184 be removed and that Ms. Kahn indicated the Company would honor the request.

(d) Kentucky Power states it removed the lamp on April 2, 2015 at approximately 6:22 p.m.

(e) Kentucky Power admits that Ms. Kahn indicated she would call the Complainants after further investigation.

(f) Kentucky Power denies all remaining allegations inconsistent with these admissions.

22. In response to the sixteenth paragraph (“Tuesday March 31, 2015 ...”) and seventeenth paragraph (“Wednesday April 1, 2015...”) Kentucky Power admits the lamp was removed on April 2, 2015 and is without information sufficient to admit or deny the remaining allegations and therefore denies the same.

23. In response to the eighteenth paragraph (“Thursday April 2, 2015...”) Kentucky Power admits that Ms. Kahn called the Complainants and subsequently hung up when the call was not answered.

24. In response to the nineteenth paragraph (“Anyway Debbie calls back ...”):

(a) Kentucky Power denies that Ms. Kahn stated that the Company installed the mercury-vapor lamp on the Complainants’ outbuilding.

(b) Kentucky Power admits Ms. Kahn stated that the Company's practice was to confirm with the person establishing combination electric/outdoor lighting service at 440 31st Street, Ashland, Kentucky that he or she wanted the dusk-to-dawn lamp service to continue.

(c) Kentucky Power admits Ms. Kahn discussed with Ms. Morrison the Company's practice of confirming with a customer establishing service at a location with existing combination electric service/outdoor lighting whether the customer wishes to continue the outdoor lighting service.

(d) Kentucky Power denies that its records indicate complaints being received by Kentucky Power concerning the dusk-to-dawn lamp located on Kentucky Power No. 2184.

(e) Kentucky Power admits that Ms. Morrison indicated that she wanted the dusk-to-dawn lamp installed on Kentucky Power Pole No. 2184 removed.

(f) Kentucky Power is without information sufficient to admit or deny the remaining allegations of the Complaint and therefore denies the same.

25. In response to the twentieth paragraph ("I then said speaking of that ...")
Kentucky Power:

(a) Admits that Ms. Kahn informed Ms. Morrison that she had conferred with Kentucky Power management and that the Complainants were not entitled to a refund.

(b) Denies that the Company's actions as alleged in the complaint constituted fraud.

(c) Admits that its currently available records indicate Douglas Morrison established combination electric/outdoor lighting service at 440 31st Street, Ashland, Kentucky in December 1996 and that Company practice at that time would have been to request confirmation at the time service was established by Douglas Morrison that he wanted the combination electric/outdoor lighting service to continue.

(d) Admits so much of the paragraph as alleges that Ms. Kahn indicated that the Company's then-available records containing signatures did not extend to back to 1994.

(e) Kentucky Power denies the remaining allegations of the paragraph.

26. Kentucky Power admits the allegations of the twenty-first paragraph of the complaint (“Debbie then says”)

27. Kentucky Power is without information sufficient to admit or deny the allegations set forth in the twenty-second paragraph of the complaint (“Wednesday April 8, 2015 ...”) and therefore denies the same, except Kentucky Power admits it did not further contact the Complainants regarding the subject matter of their complaint after removing the dusk-to-dawn lamp at their request.

28. In response to the allegations contained on page 12 of the complaint, Kentucky Power:

(a) Admits upon information and belief that the photograph shown on page 12 is of the outbuilding and attached lighting fixture at the rear of the Complainants' residence.

(b) Denies that it led the Complainants to believe the Company was charging the Complainants for the fixture affixed to the outbuilding shown in the photograph, except that it admits that it was charging the Complainants for the electricity consumed by the lamp as part of their residential service at 440 31st Street, Ashland, Kentucky. By contrast, dusk-to-dawn lamp service for which the Complainants were being charged is unmetered.

(c) Denies that what the Company believes to be a mercury-vapor lamp affixed to the Complainants' outbuilding is identical to the high pressure sodium lamp affixed to Kentucky Power Pole No. 2184.

(d) Admits that Kentucky Power Pole No. 2184 is not located on Complainants' property and that it instead is located on a right-of-way or easement across the alleyway abutting the Complainants' property.

(e) Kentucky Power denies all remaining allegations inconsistent with the admissions set forth above.

29. In response to the allegations contained on page 13 of the complaint, Kentucky Power:

(a) Admits that, upon information and belief, the photograph appears to depict the side of a residence on the east side of 31st Street, Ashland, Kentucky and that the utility pole shown in foreground of the photograph appears to be Kentucky Power Pole No. 2182.

(b) Denies that the dusk-to-dawn lamp affixed to Kentucky Power Pole No. 2184 previously was affixed to Kentucky Power Pole No. 2182.

(c) Is without knowledge sufficient to admit or deny the remaining allegations and therefore denies the same.

30. In response to the allegations contained on page 14 of the complaint, Kentucky Power:

(a) Admits that, upon information and belief, the photograph appears to depict the residence located at 440 31st Street, Ashland, Kentucky.

(b) Is without information sufficient to admit or deny the identity of the person pictured in the photograph.

(c) Admits that the utility pole closest to the person pictured in the photograph is Kentucky Power Pole No. 2182.

(d) Admits that utility pole on the south side of the alley abutting the residence at 440 31st Street, Ashland, Kentucky is Kentucky Power Pole No. 2184.

(e) Denies that the pole depicted on the north side of the alley abutting the residence at 440 31st Street, Ashland, Kentucky is a Kentucky Power pole. Kentucky Power further states the service facilities shown on pole appear to be telecommunications facilities.

(f) Is without information sufficient to admit or deny the remaining allegations and therefore denies the same.

31. In response to the allegations contained on page 15 of the complaint, Kentucky Power:

(a) Admits upon information and belief that the photograph appears to depict in hand-drawn circle the dusk-to-dawn lamp shown affixed to what appears to be the pole (Kentucky Power Pole No. 2184) on the south side of the alley abutting 440 31st Street, Ashland, Kentucky.

(b) Denies upon information and belief, that the mercury-vapor lamp affixed to the outbuilding on the Complainants' property is identical to the dusk-to-dawn high pressure sodium lamp affixed to Kentucky Power Pole No. 2184 that is the subject of the Complainants' complaint.

(c) Admits that Kentucky Power Pole No. 2184 is located on a right-of-way or easement and that Kentucky Power Pole No. 2184 has never been located on the Complainants' property.

(d) Admits that that at the time service was established by Douglas Morrison at 440 31st Street that the Company's practice was to inquire of the person establishing service at a residence with an existing associated dusk-to-dawn lamp if the new customer wished to continue the dusk-to-dawn lamp service, and that such service would have been continued only if the customer agreed.

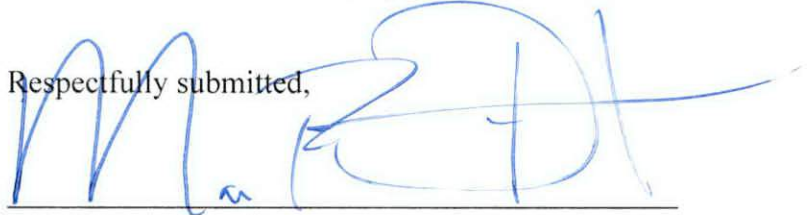
(e) Denies all allegations on page 15 of the complaint inconsistent with paragraphs 32(a)-(d) of this amended answer.

(f) Is without information sufficient to admit or deny the remaining allegations of page 15 and therefore denies the same.

WHEREFORE, Kentucky Power Company respectfully requests that:

1. The Complaint be dismissed with prejudice; and
2. The Company be accorded all other relief to which it may appear entitled.

Respectfully submitted,



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COUNSEL FOR:
KENTUCKY POWER COMPANY

Certificate of Service

I hereby certify that a copy of the foregoing tendered amended answer was mailed United States First Class Mail, postage prepaid, this 28th day of August, 2015 to:

Douglas Morrison
Sylvia Morrison
440 31st Street
Ashland, Kentucky 41101



Mark R. Overstreet