

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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COMMISSION

In the Matter of:

STEPHEN W. PEYTON)	
)	
COMPLAINANT)	
)	
v.)	CASE NO.
)	2018-00273
KENTUCKY UTILITIES COMPANY)	
(KU))	
)	
DEFENDANT)	

* * * * *

ANSWER OF
KENTUCKY UTILITIES COMPANY

In accordance with the Kentucky Public Service Commission’s (“Commission”) Order of August 21, 2018 in the above-captioned proceeding, Kentucky Utilities Company (“KU” or the “Company”) respectfully submits this Answer to the Complaint of Stephen W. Peyton (“Complainant”) filed on August 7, 2018. In support of its Answer, and in response to the specific averments contained in said Complaint, KU states as follows:

1. KU admits the allegations contained in paragraphs (a) and (b) of the Complaint, on information and belief.

2. With regard to the allegations contained in paragraph (c) of the Complaint, KU states as follows:

a. KU records show that Mr. Peyton called KU Customer Service on April 29, 2018 and requested that services at a rental unit owned by him, located at 3111 Glenridge Circle in Lexington, Kentucky (“Glenridge”), be transferred into his name as soon as possible due to his tenant vacating the premises. A work order for this transfer was scheduled for May 1, 2018.

b. On May 29, 2018, Mr. Peyton again called KU Customer Service to inquire as to whether or not his new tenant had called KU to establish new electric service at Glenridge, and to ensure that the service was no longer in his name. KU advised Mr. Peyton that service was still active and in his name and that the new tenant had not established new services as of that time. Mr. Peyton requested that we remove the active services from his name immediately, and the work order to turn off service to Glenridge was issued for May 30, 2018.

c. KU turned off electric service to Glenridge on May 30, 2018, conducted a final meter reading, and issued a final bill of \$147.21 to Mr. Peyton.

d. On June 1, 2018, a woman identifying herself as Jennifer Owens appeared in person at the KU General Office in Lexington to apply for

electric service. KU was unable to verify her Social Security number, and advised Ms. Owens that she would need to provide a correct Social Security number, and a valid form of identification in order to apply successfully for electric service. Ms. Owens' name was not associated with the Glenridge property due to her unverifiable Social Security number; however, the event of her appearance at the KU General Office was noted. Ms. Owens gave no other identifying information at that time (i.e., address, phone number, date of birth).

e. Mr. Peyton called KU Customer Service again on July 5, 2018 to request that electric service be placed into his name as a result of an eviction of his tenants. A work order was established to complete this transfer of service on July 6, 2018.

f. On July 6, 2018, upon arrival at the Glenridge property, KU technicians found that the meter was already running, indicating that an unauthorized reconnect had occurred sometime after May 30, 2018. KU technicians disconnected the unauthorized service, removed the existing meter base, installed a new meter, and connected electric service once again in Mr. Peyton's name.

g. A meter reading taken on July 6, 2018 by KU technicians showed that since the last meter reading and disconnection of service on May 30, 2018 (see paragraph c above), 2138 kWh of electricity had been consumed at the premises.

h. KU then issued a corrected final bill of \$213.71, which amount included both the unauthorized usage from May 30, 2018 – July 5, 2018, as well as \$90 for the unauthorized reconnection fee.

i. Mr. Peyton called KU Customer Service on July 23, 2018 regarding the reissued bill and the additional charges appearing on same. At this time on this call, the above sequences of his own actions were reiterated to Mr. Peyton. After conferring with her manager, the Customer Service Representative advised Mr. Peyton that, because the electric services were never established in a new customer's name and consistent with KU's filed tariff, the unauthorized connection and unauthorized consumption of electricity must be billed to the property owner. In this circumstance, Mr. Peyton was the last known account holder at the Glenridge property.

j. Mr. Peyton stated on that same call that there was no service at the home when he gained access after the eviction.

k. Later that same day, a representative from our Customer Commitment Team ("CCT") that handles escalated customer complaint issues called Mr. Peyton to review the entire sequence of events with him and to attempt to reconcile the situation. Our CCT representative explained that there was no record of a tenant calling in to establish service. Mr. Peyton insisted that he feels it is not proper for KU to hold him responsible for the charges at a property not under his control at the

time the charges were incurred. When asked by our representative for the name(s) of the tenant(s), Mr. Peyton refused to disclose such information.

l. Mr. Peyton asked to speak with the CCT representative's supervisor, and was called on July 24, 2018 by the Customer Commitment Coordinator, Julie Stethen. Ms. Stethen reviewed the matter again with Mr. Peyton, and attempted to review Mr. Peyton's options as a landlord, including providing the tenant's name or contacting KU after a few days to confirm service is active in a new customer's name. Mr. Peyton explained that he feels it is KU's responsibility to know who was living in the Glenridge property and to pursue them for payment, not his. He also explained that he did not feel it was necessary for him to confirm that new tenants had secured electric service with KU prior to their possession date at the rental property. Mr. Peyton then asked to speak with Ms. Stethen's manager.

m. On the same day, Tim Melton, the Manager of Customer Commitment contacted Mr. Peyton, and confirmed all previous conversations regarding the matter at hand, and also explained that KU is following tariff provisions regarding unauthorized reconnections. Mr. Peyton stated that he felt this treatment is unfair, and thanked Mr. Melton for reaching out to him and listening to his concerns.

3. With regard to any other averments in the Complainant's Complaint which are not otherwise addressed, KU does not have enough knowledge to admit, and therefore denies same.

FIRST AFFIRMATIVE DEFENSE

The 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.

SECOND AFFIRMATIVE DEFENSE

The Complainant has failed to set forth a *prima facie* case that KU has violated its tariff or any statute or Commission regulation, and the Complaint should be dismissed for that reason.

THIRD AFFIRMATIVE DEFENSE

The Terms and Conditions of KU's Electric Tariff, with regard to Customer Responsibilities, at Original Sheet 97.2 provides that "Customers will be held responsible for tampering, interfering with, breaking of seals of meters, or other equipment of Company installed on Customer's premises, and will be held liable for same according to law." Because no new customer had been established at this premises, under the provisions of KU's approved tariff, Mr. Peyton is responsible for any tampering with the Company's equipment located on his premises.

FOURTH AFFIRMATIVE DEFENSE

The Terms and Conditions of KU's Electric Tariff at Original Sheet 105 provide in relevant part:

Service will not be supplied to any premises if Applicant or Customer is indebted to Company for service previously supplied at the same or any other premises until payment of such indebtedness shall have been made. Service will not be continued to any premises if Applicant or Customer is indebted to Company for service previously supplied at the same premises in accordance with 807 KAR 5:006, Section 15(1)(f). *Unpaid balances of previously rendered Final Bills may be transferred to any account for which Customer has responsibility and may be included on initial or subsequent bills for the account to which the transfer was made.* Such transferred Final Bills, if unpaid, will be a part of the past due balance of the account to which they are transferred. When there is no lapse in service, such transferred Final Bills will be subject to Company's collections and disconnect procedures in accordance with 807 KAR 5:006, Section 15(1)(f). Final Bills transferred following a lapse in service will not be subject to disconnection unless: (1) such service was provided pursuant to a fraudulent application submitted by Customer; (2) Customer and Company have entered into a contractual agreement which allows for such a disconnection; or (3) the current account is subsequently disconnected for service supplied at that point of delivery, at which time, all unpaid and past due balances must be paid prior to reconnect.

As a result, KU's actions in transferring the unpaid balance to another account for which Mr. Peyton is responsible is consistent with the Company's tariff.

FIFTH AFFIRMATIVE DEFENSE

The filed rate doctrine requires that utility companies strictly adhere to their published rate schedules, which are on file with, and approved by, the Kentucky Public Service Commission (PSC) for service.¹ Kentucky's state and federal courts have recognized and applied the principle,² and the PSC has labeled the doctrine "the bedrock of utility rate regulation."³ Kentucky's treatment of the filed rate doctrine mirrors that of the United States Supreme Court which declared that the filed rate is "for all purposes, the legal rate....The rights as defined by the tariff cannot be varied or enlarged by either

¹ *In the Matter of: North Marshall Water District*, Case No. 95-107, Order at 2 (Ky. PSC Oct. 13, 1995).

² *Commonwealth v. Anthem Ins. Cos., Inc.*, 8 S.W.3d 48, 52 (Ky. App. 1999); *Big Rivers Elec. Corp. v. Thorpe*, 921 F. Supp. 460, 464 (W.D. Ky. 1996).

³ *In the Matter of: North Marshall*, Case No. 95-107, at 3.

contract or tort of the carrier.”⁴ And, KRS 278.010(12) defines "rate" to include "any rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental, or other compensation, and any schedule or tariff or part of a schedule or tariff thereof."

Kentucky codifies the filed rate doctrine at KRS 278.160(2). That provision reads:

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.⁵

Strict adherence to published tariffs is required, and the PSC prohibits any departure therefrom, "either by agreement or conduct."⁶

Utility companies have no discretion to waive or otherwise refuse to charge a tariffed fee that a customer incurs or other term or condition of service.⁷ Deviation from the tariff is viewed as discrimination and is strictly proscribed by statute,⁸ case law,⁹ and PSC decisions.¹⁰

⁴ *Anthem*, 8 S.W.3d at 51, quoting *Keogh v. Chicago & Northwestern Ry.*, 260 U.S. 156, 163 (1922). See also *AT&T v. Central Office Telephone*, 524 U.S. 214 (1998).

⁵ KRS 278.160(2).

⁶ *In the Matter of: North Marshall*, Case No. 95-107, at 2; Cf. *Boone County Sand and Gravel Co. v. Owen County Rural Elec. Cooperative Corp.*, 779 S.W.2d 224 (Ky. App. 1989).

⁷ See *In the Matter of: An Investigation into the Business Practices of Western Pulaski County Water District, Alleged Failure to Comply with Administrative Regulation 807 KAR 5:006, and Alleged Violations of KRS 278.160 and KRS 278.170*, Case No. 2002-00013, Order at 6 (Ky. PSC Aug. 9, 2002).

⁸ KRS 278.160; KRS 278.170; *Boone County Sand and Gravel*, 779 S.W.2d at 226 .

⁹ See, e.g., *Sallee Horse Vans, Inc. v. Pessin*, 763 S.W.2d 149, 150 (Ky. App. 1988).

¹⁰ See, e.g., *Joyland Kennel, Inc. v. Boone County Water Dist.*, Case No. 96-218, Order at 2 (Ky. PSC May 23, 1996).

The PSC has repeatedly noted the “strong public policy to ensure rate uniformity.”¹¹ The PSC has also recognized that some may view adherence to the filed rate doctrine as “dogmatic,” but that fidelity to the doctrine is necessary and in the public interest; therefore, the filed rate doctrine is “a hard and fast rule which must be applied in all cases.”¹²

WHEREFORE, for all of the reasons set forth above, Louisville Gas and Electric Company respectfully requests:

- (1) that the Complaint herein be dismissed without further action taken by the Commission;
- (2) that this matter be closed on the Commission’s docket; and
- (3) that KU be afforded any and all other relief to which it may be entitled.

Dated: August 31st, 2018

Respectfully submitted,



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¹¹ See *In the Matter of: Leslie County Tel. Co.*, Case No. 95-517, Order at 4 (Ky. P.S.C. June 21, 1996).

¹² *In the Matter of: Leslie County Tel. Co.* at 8.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Answer was served on the following on the 31st day of August, 2018, U.S. mail, postage prepaid:

Stephen W. Peyton
3709 Ansley Ct.
Lexington, KY 40509


Counsel for Louisville Gas and Electric
Company