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October 14, 2005

Honorable John J. Finnigan, Jr.
Senior Counsel
The Union Light, Heat and Power Company
139 East Fourth Street
Cincinnati, OH 45202

CERTIFICATE OF SERVICE

RE: Case No. 2004-00454
The Union Light, Heat and Power Company

I, Beth O'Donnell, Executive Director of the Public Service Commission, hereby certify that the enclosed attested copy of the Commission's Order in the above case was served upon the addressee by U.S. Mail on October 14, 2005.

Executive Director

BOD/jc
Enclosure

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DEBORAH B. SCHMIDT AND)
JOHN R. SCHMIDT)

COMPLAINANTS)

v.)

THE UNION LIGHT, HEAT AND)
POWER COMPANY)

DEFENDANT)

CASE NO. 2004-00454

O R D E R

On November 15, 2004, John and Deborah Schmidt (“Complainants”) filed with the Commission a complaint against The Union Light, Heat and Power Company (“ULH&P”). Complainants allege that, on October 4, 2004, ULH&P wrongfully disconnected gas service to Complainants’ residence. Complainants request restoration of gas service under Mr. Schmidt’s name’ with no additional fees, and “compensation for wrongfully imposed inconvenience to the Schmidt family, at \$20/day, for each day of disconnection, or such other remedy as the Commission may ascribe.”²

¹ The record indicates that service was restored to Complainants, in Mr. Schmidt’s name, on November 20, 2004. Answer of Defendant at 4.

² Complaint at 2.

ULH&P denies that it wrongfully terminated gas service to Complainants and asserts that it provided service to Complainants “in accordance with all requirements under Kentucky statutes, regulations and ULH&P’s tariff.”³ ULH&P claims that it has restored gas service to Complainants’ residence in Mr. Schmidt’s name.

BACKGROUND

The crux of Complainants’ complaint is that the minimum payment requirements were met to prevent disconnection of gas service to their residence. Specifically, Complainants assert that, on September 16, 2004, they deposited a check for \$177.12 (the alleged minimum amount needed to prevent disconnection of service), along with a yellow disconnect notice allegedly bearing the September 17, 2004 due date, into a deposit box at one of ULH&P’s offices and, despite this payment, gas service was disconnected to their residence.

Complainants claim that a bill from ULH&P issued on July 29, 2004 stated that a payment of \$177.12 was required by August 20, 2004. Billing records submitted by ULH&P indicate that Complainants’ total arrearage at that time was \$451.82, but that the \$177.12 payment was calculated pursuant to a payment agreement with Complainants.⁴ Complainants made no payment until September 16, 2004. A bill issued on August 25, 2004, and containing a yellow disconnect notice, informed Complainants that payment of

³ Answer at 4.

⁴ Complainants do not dispute the amount of the arrearage.

\$497.58 was due by September 16, 2004.⁵ Complainants claim that in a telephone conversation with a ULH&P representative prior to September 16, 2004, the ULH&P representative informed Complainants that \$177.12 was the minimum amount due to avoid disconnection. Complainants made no further payments on their account until on or about November 20, 2004, at which point service was transferred to Mr. Schmidt's name.

ULH&P asserts that the representative to whom the Complainants spoke on September 16, 2004 informed Complainants that a minimum payment of \$177.12 was due by close of business on September 16, 2004 in order to avoid disconnection. ULH&P also asserts that this same representative informed Complainants that should the \$177.12 payment not be made by close of business on September 16, 2004, the payment agreement would be cancelled and the entire balance of \$412.70 would have to be paid in order to avoid disconnection of gas service. The bill issued on August 25, 2004 also contained language informing Complainants that a payment of \$412.70 was due to avoid disconnection.⁶ ULH&P further asserts that a notice on the drop box where Complainants made their payment on September 16, 2004 clearly states that all payments made after 2:00 p.m. would not be credited to a customer's account until the following business day.

⁵ Complainants assert that the disconnect notice had a final due date of September 17, 2004. The disconnect notice, however, is not in the record. The bill issued on August 25, 2004 stated a final due date of September 16, 2004 and, moreover, Complainants admit that the ULH&P representative to whom they spoke informed them that the due date for payment was September 16, 2004. Thus, should Complainants assert that they had until September 17, 2004 to make payment to avoid disconnection, the assertion is amply refuted by the evidence of record which clearly establishes September 16, 2004 as the date by which payment had to be made.

⁶ The notice reads, "IMPORTANT: Amount Due to Avoid Disconnection: \$412.70. Please pay the amount before the date shown on the enclosed disconnection notice to avoid disconnection." ULH&P's Response to Commission Staffs Interrogatories and Requests for Production of Documents, Attachment 3.

Complainants assert that they made payment at approximately 3:10 p.m. on September 16, 2004. The payment, therefore, was not credited to Complainants' account until September 17, 2004.

A bill issued on September 24, 2004 contained the following warning, "IMPORTANT: If your service has not yet been disconnected, please pay \$274.70 immediately to avoid disconnection." On October 4, 2004, gas service to Complainants' premises was disconnected for nonpayment. Complainants allege that on October 4, 2004 ULH&P employees arrived at their premises and informed Mrs. Schmidt that they were cleaning the line without informing Complainants that service also was being disconnected.⁷

According to ULH&P's records, in August 2004 Complainants' curb-box had been referred to ULH&P's Construction and Maintenance Group for realignment. The order for the realignment was sent to the Construction and Maintenance Group with additional instructions to disconnect the service for nonpayment. ULH&P admits that service was disconnected on October 4, 2004, but is unable to admit or deny that the employees who disconnected the service failed to inform Complainants that the service was being disconnected for nonpayment.

On November 20, 2004, Mr. Schmidt made a payment to ULH&P of \$373.00. Service was restored to Complainants' residence and service was placed in Mr. Schmidt's name.

⁷ Complaint at I.

DISCUSSION

Complainants requested relief is: (1) restoration of gas service under Mr. Schmidt's name' with no additional fees; and (2) "compensation for wrongfully imposed inconvenience to the Schmidt family, at \$20/day, for each day of disconnection, or such other remedy as the Commission may ascribe."⁹ As discussed below the Commission herein finds that the complaint has been satisfied and should be dismissed.

Complainants request damages for the "wrongfully imposed inconvenience" for discontinuance of gas service. Complainants request relief that is not within the Commission's power to grant. The Commission does not have the authority to award damages. In Carr v. Cincinnati Bell, Inc., 651 S.W.2d 126 (Ky. App. 1983), 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 matter, Kenton Circuit Court dismissed the suit. Reversing the circuit court's opinion on this issue, the Court 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. 4.

Id. at 128.

The Commission, therefore, has authority over only the portion of the complaint relating to Complainants' request that gas service be restored and placed in Mr. Schmidt's

⁸ The record indicates that service was restored to Complainants, in Mr. Schmidt's name, on November 20, 2004. Answer at 4.

⁹ Complaint at 2.

name. By restoring gas service to Complainants' residence on November 20, 2004 and placing the service in Mr. Schmidt's name, ULH&P has partially satisfied the complaint. The complaint, therefore, should be dismissed as satisfied.

The Commission, after a review of the record, finds that ULH&P did not violate applicable statutes, regulations or tariff provisions relating to discontinuance of service for nonpayment. ULH&P appears to have provided service to Complainants in accordance with all requirements under Kentucky law and ULH&P's tariff.

IT ~~IS~~ THEREFORE ORDERED that this case is dismissed with prejudice as satisfied and is removed from the Commission's docket.

Done at Frankfort, Kentucky, this 14th day of October, 2005.

By the Commission

ATTEST:


Executive Director

Case No. 2004-00454