

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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JUL 3 2006

In the matter of:

PUBLIC SERVICE
COMMISSION

ROY GAINES WALTON
GERALD WALTON, Et Al
COMPLAINANTS

V.

KENTUCKY UTILITIES COMPANY
DEFENDANT

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)
)
) NO. 2005-00136 and
) NO.s 2004-00450; 2005-
) 00099; 2004-00497; 2004-
) 00499; 2005-00118; 2005-
) 00137; and 2005-00182
)
)
)

PLAINTIFFS' CLOSING ARGUMENT

Come the Plaintiffs, Roy Walton and Gerald Walton, and for their closing argument in the above named matter state as follows.

The issue before the Commission is certain tariff language at Original Sheet No. 82.1, "Upon the absence of an active account, the property owner assumes responsibility for any consumption and the Company's property and service", and the effect of that language on property owners.

The Plaintiffs' position is the tariff and the effect thereof is unreasonable, arbitrary and in violation of the Plaintiffs' due process rights. KU created the tariff in order to be paid for the product it sells, electricity, in instances where electricity had been stolen. The motivation for the tariff makes sense in that KU wants to be paid for the product it sells; however, the arbitrary assignment of the cost of stolen goods to a certain group of citizens of the state – property owners that provide a place for people to live in

return for rent – is unfair and in violation of the constitution as well as public policy. Furthermore, the tariff allows KU to not only recover the cost of the stolen electricity from the innocent landlord but also permits KU to assess penalties against the landlord in the form of “diversion charges” and suspension of electric service.

KU testified that KU and LG&E have about 14,000 diversion cases per year. According to testimony KU and LG&E (hereinafter referred to as the “Company”) read meters on a monthly basis. The meter readers are responsible for alerting the Company to suspected diversion, the Company then does an initial review to weed out mistaken diversion suspicion and then sends it to the investigative team. If there is no active account then the property owner is billed for the consumption, property damage, plus diversion charges as required by the tariff. The Company testified that diversion charges are unique in every case and the purpose of the charge is to pay for the salary of the staff that processes suspected diversion and for other Company costs incidental to investigating and billing. The Company further testified that there is no tariff, regulation, law or policy that governs the determination of the monetary amount of the diversion charge.

The Company testified that in the instance of diversion and no active account the Company bills the landlord even if the landlord is not the guilty party. The Company further testified that in this case, Mr. Walton was charged for the theft of electricity as well as denied electric service at 832 Ward Drive even though the evidence shows he was not the guilty party and did not steal electricity. The Company acknowledged the guilty party had taken a meter from 836 Ward Drive (not Mr. Walton’s property) and attached it to the base at 832 Ward Drive. The original tariff language would require the Company

to also charge the landlord at 836 Ward Drive; however the Company refused to divulge whether it had complied with the tariff in that instance. The information is pertinent since the evidence in the record reflects that diversion charges and other costs are arbitrarily determined and assessed.

It is clear that the original tariff language quoted above at Original Sheet 82.1 must be repealed as arbitrary, unconstitutional and against public policy. The Company realizes this and has proposed amended tariff language. The Plaintiffs are strongly opposed to the proposed amended language because the language requires the landlord to “have the responsible party apply for service with the Company and/or reimburse the Company for all costs associated with the incident” as a condition precedent to relieving the landlord from financial responsibility. If the Commission accepts the proposed amended tariff language then Mr. Walton would be relieved of financial responsibility only if he could **make** the tenant apply for service as well as pay for any prior stolen service and all “costs associated”.

The effect of the proposed amended tariff language is essentially the same as the original tariff language because the landlord is not going to realistically be able to make the thief come clean, admit his or her errors and rush to pay for what he or she has stolen. The bottom line is that the Company is unlawfully trying to require a group of people, landlords, to pay for crimes committed by another group of people, thieves, which may or may not be past or present tenants. If the PSC allows the original or the proposed tariff language then the PSC is giving KU the authority to not only steal from landlords but to further penalize them with arbitrary “fees” and “associated costs” and denial of service.

The Plaintiffs respectfully request the original tariff language at issue be repealed and the proposed amended tariff language be denied and that the Plaintiffs be reimbursed for all costs associated with this administrative appeal, including attorney fees.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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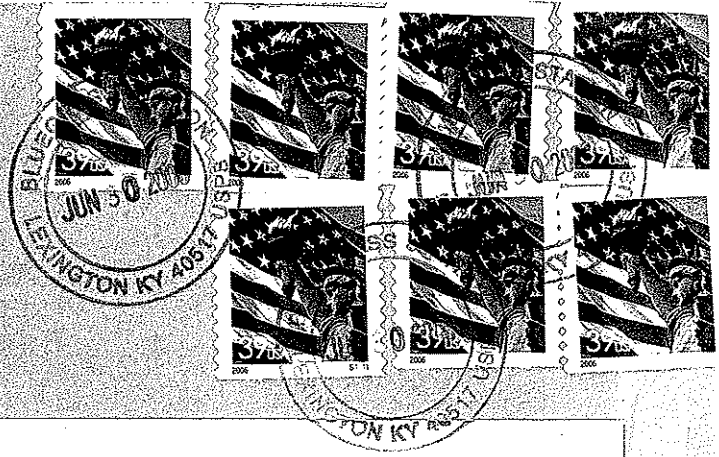
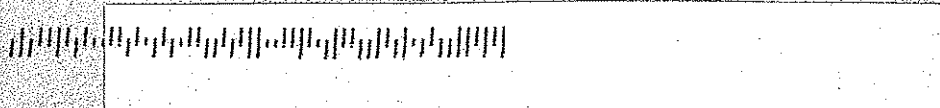
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