



Ernie Fletcher
Governor

Mark David Goss
Chairman

Teresa J. Hill, Secretary
Environmental and Public
Protection Cabinet

Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, Kentucky 40602-0615
Telephone: (502) 564-3940
Fax: (502) 564-3460
psc.ky.gov

John W. Clay
Commissioner

Christopher L. Lilly
Commissioner
Department of Public Protection

October 18, 2006

Michael S. Beer
Vice President, Rates & Regulatory
Kentucky Utilities Company
c/o Louisville Gas & Electric Co.
P. O. Box 32010
Louisville, KY 40232-2010

CERTIFICATE OF SERVICE

RE: Case No. 2005-00389
Kentucky Utilities 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 18, 2006.

A handwritten signature in black ink, appearing to read "Beth O'Donnell", written over a horizontal line.

Executive Director

BOD/jc
Enclosure



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Honorable Preston Scott Cecil
Attorney at Law
Bullock & Coffman, LLP
101 Saint Clair Street
Frankfort, KY 40601

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Honorable Elizabeth L. Cocanougher
Senior Corporate Attorney
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Honorable J. Gregory Cornett
Attorney at Law
Stoll Keenon Ogden, PLLC
2000 PNC Plaza
500 W Jefferson Street
Louisville, KY 40202-2828

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Jim Dimas
Senior Corporate Attorney
Louisville Gas and Electric Company
220 W. Main Street
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Andre F. Regard
Attorney at Law
269 W. Main Street, Suite 600
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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

271 WEST MAIN STREET, LLC)	
)	CASE NO.
COMPLAINANT)	2005-00389
)	
V.)	
)	
KENTUCKY UTILITIES COMPANY)	
)	
DEFENDANT)	

O R D E R

This matter is before the Commission on the complaint of 271 West Main Street, LLC (“West Main”), a Kentucky limited liability corporation, alleging that it has been charged a rate for electric service that is not in accord with Kentucky Utilities Company’s (“KU”) filed tariff. The matter has been fully briefed and is ripe for a decision.

BACKGROUND

West Main filed its complaint on September 19, 2005. West Main alleged that it purchased a commercial building located at 269 West Main Street in Lexington, Kentucky on March 18, 2005, and that despite the pre-purchase due diligence performed by West Main, its bills for electricity service unexpectedly increased by approximately 43 percent over the rates paid by the prior owners of the property. Upon receiving the larger utility bills, West Main contacted KU and was advised that the property had previously been billed under KU’s Large Power Service Rate (“LP Rate”), which is lower than KU’s General Service Rate (“GS Rate”), but due to a 2004 change

in the LP Rate, West Main was no longer eligible for the LP Rate. The 2004 change increased the average load threshold for a customer to qualify for the LP Rate but included a “grandfather clause” to allow existing customers who no longer meet the threshold to continue being served under the LP Rate. In filing its complaint, West Main alleged that “[a]s it is well known, most grandfathered conditions (such as zoning nonconforming issues) generally apply to the property and not to the ownership.” West Main prayed the Commission to restore its property to KU’s LP Rate rather than the higher GS Rate.

KU filed its answer on March 10, 2006. KU took the position that the transfer of ownership of a property resulted in the establishment of a new customer account for the address. KU further claimed that West Main does not qualify for the LP Rate under KU’s LP Electric Rate Schedule due to West Main’s average load and, instead, qualifies only for KU’s GS Rate under the GS Electric Rate Schedule. KU disputes that application of the GS Rate results in a 43-percent increase in rates for West Main, but admits that it would result in an approximate 30-percent rate increase.

The tariff at issue here was approved by the Commission and went into effect on July 1, 2004, pursuant to the Commission’s Order of June 30, 2004 in Case No. 2003-00434.¹ On July 21, 2006, the Commission entered an Order setting a briefing schedule. KU filed its memorandum on August 7, 2006. West Main requested and received an extension of time to file a response, which was filed on September 1, 2006. KU filed a reply brief on September 11, 2006.

¹ Case No. 2003-00434, An Adjustment of the Rates, Terms and Conditions of Kentucky Utilities Company (Ky. PSC June 30, 2004).

DISCUSSION

There is only one issue in this case: whether or not the LP Tariff grandfather clause should apply to West Main, thereby entitling West Main to receive electric service at the LP Rate. The LP Electric Rate Schedule, as approved in Case No. 2003-00434, states in relevant part:

Customers with average single phase loads less than 200 kW receiving service under this rate schedule as of July 1, 2004, will continue to be served under this rate schedule.

According to West Main, "[t]he issue before the Commission is how the term 'customers' is defined for the purpose of determining the applicable Tariff for the rate charge for electric service." This is strictly a question of law. West Main contends that the term "customers" refers to service locations or properties, while KU contends that the term applies only to persons or entities who receive service from the utility. If West Main's definition is correct, its property would remain grandfathered under the LP Electric Rate Schedule. If KU's definition is correct, then it acted properly in applying the GS Electric Rate Schedule.

We find that for purposes of the LP Electric Rate Schedule approved by the Commission on June 30, 2004, the word "customer" means the person or entity receiving electrical service and not the location where that electrical service is provided. Tariffs should be enforced according to the plain and ordinary meaning of their expressed language, and this tariff is not ambiguous. Finding that "customer" means a person or entity for purposes of the subject tariff is in accord with our regulations,

specifically 807 KAR 5:006, Section 1(2), where “customer” is defined as “any person, firm, corporation or body politic applying for or receiving service from any utility.”²

West Main’s arguments to the contrary are not persuasive. The Commission disagrees that the use of the terms “customer class” and “customer classification” in 807 KAR 5:001, Section 10(3), imply a preference for defining customers based upon power usage at a particular location. While utilities may classify customers by load volume, there is nothing inherent in the regulation to indicate that this categorization includes a geographic component. Likewise, West Main’s reliance upon case law and statutes from foreign jurisdictions are not authoritative precedent and, in any event, are easily distinguished. The case of Brennan Petroleum Products Co. v. Pasco Petroleum Co., 373 F.Supp.1312, 1318 (D. Ariz. 1974) arises in antitrust law, not utility law. Pasco relates to the allocation of gasoline rations under the Economic Stabilization Act of 1970 and the Emergency Petroleum Act of 1973 as well as federal antitrust statutes. The discussion of the use of the term “customer” in that case is therefore limited to the specialized context of those statutes. The statutes of the states of Washington and South Dakota cited by West Main are similarly unpersuasive. As there is no ambiguity in the subject tariff or the Commission’s regulation defining “customer,” the Commission need not resort to the examination of external sources to construe the tariff, let alone non-Kentucky authorities. The plain and ordinary meanings of the tariff and Commission regulations will apply.

² This meaning of the word “customer” is also applicable in 807 KAR 5:041, Section 1(3); 807 KAR 5:066, Section 1(1); and 807 KAR 5:071, Section 2(3).

Although West Main also argues that its tenants will be exposed to “undue hardship far-outweighing any negative consequences to [KU]” as a result of their loss of grandfather status, West Main does not specifically allege that its tenants are responsible or obligated to pay the utility bill. In fact, all the utility bills which are in the record are directed to the building’s owner (West Main) and not the building’s tenants.

Finally, West Main argues that if KU desires to impose the GS Electric Rate Schedule on locations receiving service under the existing grandfather clause, its remedy is to “apply for a new tariff with the Commission and raise the rates of its existing customers.” This argument disregards the plain and ordinary meaning of the subject tariff.

In light of the foregoing, the Commission determines that there is no need for a hearing in this matter. The only contested issue of fact is whether the result of the imposition of the GS Rate Schedule results in a 30-percent increase, a 43-percent increase, or an increase falling somewhere in between. For purposes of defining a “customer” under the tariff, this factual question is irrelevant. The Commission believes that the public interest does not necessitate the holding of a hearing to resolve an immaterial factual issue, nor is it necessary for the protection of substantial rights. The case turns upon the legal construction of a tariff, and the parties have fully briefed this issue. Accordingly, West Main’s informal request for a hearing will be denied.

On the basis of the foregoing, IT IS HEREBY ORDERED that:

1. West Main’s request for a hearing is denied.
2. This case is dismissed with prejudice for the reasons set forth in this

Order.

3. This matter shall be stricken from the Commission's docket.
4. This is a final and appealable Order.

Done at Frankfort, Kentucky, this 18th day of October, 2006.
By the Commission

ATTEST:



Executive Director