

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JIM DEVERS

COMPLAINANT

V.

KENTUCKY UTILITIES COMPANY

DEFENDANT

CASE NO. 2008-00199

ORDER

On May 28, 2008, Complainant, Jim Devers, filed a formal complaint alleging that he had been overcharged for consumption of electricity for the month of June 2007 and for the first three days of July 2007. Mr. Devers requested that his bills be "adjusted to a reasonable amount" and requested compensation for his time as well as attorney fees, if any. Defendant, Kentucky Utilities Company ("KU"), subsequently filed its answer, contending that Mr. Devers "has been billed only for actual meter usage in accordance with KU's tariffs and the Commission's regulations." A procedural schedule was established providing for discovery and an opportunity to request a hearing. The parties have not requested a hearing, and the matter now stands submitted to the Commission for resolution.

For the reasons stated below, the Commission finds that the complaint should be dismissed in its entirety.

FINDINGS OF FACT

On January 13, 2007, Mr. Devers and his family moved out of their home located at 126 Cherry Hill Drive, Georgetown, Kentucky. The home was constructed in 2003 and KU established electric service to the residence under Mr. Devers' name in June 2003. Mr. Devers completed the sale of the house on July 2, 2007. On the same date, Mr. Devers contacted KU requesting that electric service under his name to the subject residence be terminated. From January 13, 2007 until July 2, 2007, the house remained vacant except for several appliances and the occasional traffic associated with a house listed for sale.

Mr. Devers' bill for the June billing period¹ indicates energy usage of 5,784 kWh for a total amount due of \$368.63. After terminating electric service, Mr. Devers received a bill showing usage for three billing days² of 2,083 kWh. The total due for the two bills amounted to \$493.66. Mr. Devers contests the usage reading and amount charged on both bills, arguing that his highest electricity bill at the subject property was "in the low \$300's in the dead of summer and winter where we had the thermostat at approximately 71 [degrees] year round." Mr. Devers maintained that the thermostat was "set on 77 [degrees]" during the time the subject property was vacant. Lastly, Mr. Devers complains that the usage readings for the two billing periods were abnormally high when compared to the historical usage of the subject property, particularly in light of the fact that the house was vacant during the time period in question.

¹ This bill reflects usage data from June 1, 2007 through June 29, 2007.

² The last bill reflects usage data from June 30, 2007 through July 2, 2007.

While it acknowledges that the metered usage during the two billing periods appeared to be higher than average for the subject property, KU denies that the usage was incorrectly metered or recorded. KU asserts that it has "examined the meter readings in the months leading up to and following the two disputed billing periods," finding "no irregularity in those readings." KU further asserts that it pulled the meter from the location in question and tested it in its labs in April 2008. The meter tested at an overall accuracy of 100.3 percent. KU contends that the testing reveals that the meter was in compliance with Commission regulation 807 KAR 5:041, Section 15, and shows that the meter accurately recorded usage for the subject premises. Accordingly, KU argues that it has an affirmative obligation under state law to bill Mr. Devers for metered usage.

DISCUSSION

The Commission is empowered by KRS 278.260 to hear "complaints as to rates and service of any utility." KRS 278.260 further authorizes the Commission to "dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest or for the protection of substantial rights." Based on a review of the record, the Commission finds that a hearing is not necessary in the public interest or for the protection of substantial rights.

KRS 278.160(2) prohibits any jurisdictional utility from charging, demanding, collecting or receiving "from any person a greater or less compensation for any service rendered or to be rendered than prescribed in its filed schedules." The effect of KRS 278.160(2) is to make a customer accountable for any service the customer consumed. In Boone County Sand and Gravel v. Owen County Rural Electric Cooperative

Corporation, 779 S.W.2d 224 (Ky. App. 1989), Owen County Rural Electric Cooperative Corporation (“Owen County RECC”) brought an action against Boone County Sand and Gravel to recover underbilled amounts. Boone County Sand and Gravel made a counterclaim for damages because it had adjusted its overhead for the amount it was being charged.

Boone County Sand and Gravel alleged that the underbilling was caused by an incorrect multiplier used by Owen County RECC on its bills. Twice during a 13-month period, Boone County Sand and Gravel inquired as to the accuracy of the bills. Both times Owen County RECC assured Boone County Sand and Gravel that the billing was correct, and Boone County Sand and Gravel adjusted its overhead accordingly. In doing so, Boone County Sand and Gravel incurred damages. Nevertheless, the Court of Appeals found that Owen County RECC was entitled to collect the amount underbilled. The Court of Appeals relied upon KRS 278.160(2), which requires that a utility must charge all customers the same amount for services rendered.

Additionally, KRS 278.170 provides that a utility may not give unreasonable preference to any person. From the facts of this case, it does not appear that KU is demanding greater compensation than it deserves for services rendered. The meter testing indicates that the meter at issue functioned within the legal tolerances dictated by the Commission’s regulation. The accuracy of the subject meter is corroborated by the fact that the subsequent owners of the subject premises showed usage which was comparable to that of Mr. Devers’ historical usage. Indeed, Mr. Devers acknowledges that “there have been no problems with the new owners and I understand their bills are quite normal.” Unless Mr. Devers pays the amount in dispute, he will have received

service from KU for less compensation than prescribed by its tariffs, contrary to KRS 278.160(2) and KRS 278.170.

Lastly, the Commission is without jurisdiction to award compensatory damages and attorney fees. Pursuant to KRS 278.040, the Commission has jurisdiction of only the “rates” and “services” of utilities as defined by KRS 278.010. Mr. Devers’ request for damages and fees falls under neither category.

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 of Appeals 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. 14.³

Accordingly, consideration of the requested damages is beyond the Commission’s jurisdiction.

The Commission finds that Mr. Devers fails to state a claim upon which relief may be granted and that the complaint should be dismissed.

IT IS THEREFORE ORDERED that this case is dismissed with prejudice and is removed from the Commission’s docket.

³ Id. at 128.

Done at Frankfort, Kentucky, this 30th day of December, 2008.

By the Commission

ATTEST:


for: Executive Director

Case No. 2008-00199

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