

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DIANE L. DEATON	)	
	)	
COMPLAINANT	)	CASE NO.
	)	2017-00174
V.	)	
	)	
DUKE ENERGY KENTUCKY, INC.	)	
	)	
DEFENDANT	)	

ORDER

On April 20, 2017, Diane L. Deaton (“Ms. Deaton”) tendered a formal complaint (“Complaint”) with the Commission against Duke Energy Kentucky, Inc. (“Duke Kentucky”) in which she alleges that Duke rebilled her for two months of electric service because her actual usage was much higher than the estimated usage reflected on her prior bills. Ms. Deaton stated that she had paid the prior bills and that she should not be financially responsible for the expenses incurred for high usage which was due to her faulty furnace because Duke Kentucky did not alert her to a problem sooner. Ms. Deaton provided copies of her bills for the months at issue. Ms. Deaton had paid the estimated bills when rendered by Duke Kentucky. When the meter was subsequently tested, the results revealed that the high readings were not due to a faulty meter reading, but to a faulty furnace. Ms. Deaton has complained that she should not have to pay for the actual energy consumed because Duke Kentucky should have alerted her to the problem sooner. Having reviewed the record and being otherwise advised, the Commission finds

that Ms. Deaton has failed to establish a *prima facie* case, and pursuant to Commission regulations, should be permitted the opportunity to amend the Complaint to establish a *prima facie* case within the designated time, or the matter will be dismissed without prejudice.

### BACKGROUND

Ms. Deaton receives electric service from Duke Kentucky for property located at 707 Terrace Court, Alexandria, Kentucky. In her Complaint, Ms. Deaton states that she paid the bills for July and August 2016, but the September 2016 bill was much higher than usual. Ms. Deaton explained that the bill listed \$555.72 as "Current Charges," which she did not dispute because her furnace was not functioning properly. She disputes the \$1,534.35 listed as "Prior Month(s) Charges" and explained that she "was current on (her) bill and even had a credit."<sup>1</sup>

### DISCUSSION

Commission regulation 807 KAR 5:001, Section 20(1)(c), requires that a formal complaint must state:

Fully, clearly, and with reasonable certainty, the act or omission, of which complaint is made, with a reference, if practicable, to the law, order, or administrative regulation, of which a failure to comply is alleged, and other matters, or facts, if any, as necessary to acquaint the commission fully with the details of the alleged failure.

Further, 807 KAR 5:001, Section 20(4)(a), requires the Commission to determine whether a complaint establishes a *prima facie* case. A complaint establishes a *prima facie* case when, on its face, it states sufficient allegations that, if uncontroverted by other evidence,

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<sup>1</sup> Complaint at 7. Attached Exhibit, Sep. 23, 2016 Duke Kentucky Bill, handwritten additions.

would entitle the complainant to the relief requested. The party filing a complaint has the burden of proving his claim.

Under 807 KAR 5:001, Section 20(4)(1)(a), if a determination is made that the complaint fails to establish a *prima facie* case, the complainant must be provided the opportunity to amend the complaint within a specified time. If the complaint is not timely amended to set forth a *prima facie* case, the complaint is dismissed.

Here, by failing to provide evidence that her charges resulted from an improper act, or omission, on the part of Duke Kentucky, or that Duke Kentucky's monitoring of customer usage is unreasonable, Ms. Deaton fails to establish a *prima facie* case.

According to its tariff, Duke Kentucky monitors the usage of each customer according to the procedure set out in Tariff Section V-Metering.<sup>2</sup> Further, Ms. Deaton received bills dated July 28, 2016, August 26, 2016, and September 23, 2016, all of which included a back page that included a section titled "Explanation of Bill Language" defining "EST or E" that appeared on the July 28, 2016 and August 26, 2016 bills.<sup>3</sup> The September 23, 2016 bill did not have an "E" next to the Present Meter Reading because it was actual usage, not estimated as were the two prior bills. It appears from the information provided in the bills that Duke Kentucky complied with the terms of its tariff and monitored Ms. Deaton's monthly usage through a "hi-lo" review process. The procedure protects the customer, ensuring that the customer is ultimately paying only for actual usage. Duke Kentucky's tariff provides that, "[a]n estimating factor is utilized to provide an expected level of usage. The estimating factor considers the customer's past usage and current

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<sup>2</sup> Duke Kentucky Tariff at Revised Sheet No. 24, paragraph 3.

<sup>3</sup> Complaint at 5-7.

variables, such as weather.”<sup>4</sup> In accordance with Duke Kentucky’s tariff, if there is a substantial difference between the actual and estimated usages, the account is reviewed manually and Duke Kentucky may obtain a special meter reading to determine whether the meter is faulty or there may be another explanation for the difference.<sup>5</sup> Duke Kentucky’s tariff paragraph 3(6), states that “[t]he Company will notify the customer of the investigation, its findings, and any refund or back billing to be made, in accordance with 807 KAR 5:006, Section 10 (4) and (5).”<sup>6</sup>

KRS 278.160 codifies the “filed rate doctrine.” It requires a utility to file with the Commission “schedules showing all rates and conditions for service established by it and collected or enforced.”<sup>7</sup> It further states:

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.

The primary effect of KRS 278.160 is to bestow upon a utility’s filed rate schedule the status of law from which the utility cannot deviate. A utility may implement a new rate, but until such time, it cannot deviate from its filed rate schedule. For this reason, neither equitable considerations (such as a customer’s faulty furnace) nor a utility’s negligence may serve as a basis for departing from filed rate schedules.<sup>8</sup> Therefore, Duke Kentucky

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<sup>4</sup> Duke Energy Tariff at Revised Sheet No. 24, paragraph 3.1.

<sup>5</sup> *Id.* at paragraph 3.4. and 3.5.

<sup>6</sup> *Id.* at paragraph 3.6.

<sup>7</sup> KRS 278.160(1).

<sup>8</sup> *Boone County Sand and Gravel Co. v. Owen County RECC*, 779 S.W.2d 224 (Ky. App. 1989).

must charge Ms. Deaton for the service that she received and the actual usage of electricity. Otherwise, she would be receiving service at a discounted price, a result which the filed rate doctrine prohibits.

It appears that Duke Kentucky complied with its tariff, and Ms. Deaton does not dispute the accuracy of her bills. Duke Kentucky complied with the procedure to monitor Ms. Deaton's meter and notify her of the estimation process and actual usage by way of the July 28, 2016, August 26, 2016, and September 23, 2016 bills. Therefore, Ms. Deaton has not stated a claim upon which relief may be based.<sup>9</sup>

For the above reasons, the Commission finds that Ms. Deaton's Complaint neither conforms to the requirements of 807 KAR 5:001, Section 20(1), nor establishes a *prima facie* case. The Commission, in accordance with 807 KAR 5:001, Section 20(4)(a)(1), will provide Ms. Deaton an opportunity to amend her Complaint to address these deficiencies.

IT IS THEREFORE ORDERED that:

1. Ms. Deaton's Complaint is rejected for failing to conform to the requirements of 807 KAR 5:001, Section 20(1)(c), and for failing to state a *prima facie* case.
2. Ms. Deaton shall have 14 days from the date of this Order to file an amended complaint with the Commission that conforms to the requirements of 807 KAR 5:001, Section 20(1), and that states a *prima facie* case.
3. If Ms. Deaton does not file an amended complaint within 14 days of the date of this Order, her complaint shall be dismissed without prejudice.

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<sup>9</sup> 807 KAR 5:001, Section 20(4)(a).

By the Commission

ENTERED  
MAY 22 2017  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2017-00174

Diane L Deaton  
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Alexandria, KENTUCKY 41001

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