

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KATRINA MARIE TRUSTY	)	
	)	
COMPLAINANT	)	
	)	
V.	)	CASE NO.
	)	2022-00298
	)	
CLARK ENERGY COOPERATIVE, INC.	)	
	)	
DEFENDANT	)	

ORDER

On August 26, 2022, Katrina Trusty filed a formal complaint against Clark Energy Cooperative, Inc. (Clark Energy) alleging that Clark Energy improperly charged her for her mother, Geneva Trusty's delinquent bill for service rendered at a different service address. Katrina Trusty requested these charges be removed from her bill. On September 13, 2022, the Commission ordered Clark Energy to satisfy or answer the complaint,<sup>1</sup> and on September 23, 2022, Clark Energy filed an answer acknowledging the basic facts alleged by Katrina Trusty but denying that it was improper to transfer the balance to the new account.<sup>2</sup> Clark Energy answered one request for information from Commission Staff. This matter is now before the Commission for a decision.

LEGAL STANDARD

The Commission has exclusive jurisdiction over the rates and service of utilities

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<sup>1</sup> Order (Ky. PSC Sept. 13, 2022).

<sup>2</sup> Answer (filed Sept. 23, 2022).

and is charged with enforcing the provisions of KRS Chapter 278.<sup>3</sup> The Commission has original jurisdiction over complaints as to rates or service of any utility pursuant to KRS 278.260. In a formal complaint filed pursuant to 807 KAR 5:001E, Section 20, the complainant bears the burden of proof.<sup>4</sup>

Under KRS 278.160(2), a utility may not charge, demand, collect, or receive from any person greater or less compensation for service than what is prescribed in that utility's filed tariff. A utility is required to "regard each point of delivery as an independent customer and meter the power delivered at each point."<sup>5</sup> Termination or refusal of service is permitted only for reasons set out in 807 KAR 5:006, Section 15(1), including:

(d) "[A] utility shall not be required to furnish new service to a person contracting for service who is indebted to the utility for service furnished or other tariff charges until that person contracting for service has paid his indebtedness."

...  
(f) "A utility may terminate service at a point of delivery for nonpayment of charges incurred for utility service at the point of delivery."

### BACKGROUND

On April 5, 2022, Clark Energy disconnected service to Geneva Trusty at 5823 Furnace Road, Stanton, Kentucky due to non-payment of a \$756.25 balance.<sup>6</sup> On April 11, 2022, Clark Energy opened an account for her daughter, Katrina Trusty, for service at 5803 Furnace Road, Stanton, Kentucky.<sup>7</sup> On August 4, 2022, a Low-Income Home

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<sup>3</sup> See KRS 278.040(1), (2).

<sup>4</sup> *Energy Regulatory Comm'm v. Kentucky Power Co.*, 605 S.W.2d 46, 50 (KY. App. 1980).

<sup>5</sup> 807 KAR 5:041, Section 9(2).

<sup>6</sup> Answer at 1; Exhibit 2.

<sup>7</sup> Answer at 1.

Energy Assistance Program (LIHEAP) voucher issued to Geneva Trusty was submitted to Clark Energy for Katrina Trusty's account.<sup>8</sup> According to Clark Energy:

When the voucher was presented to Clark Energy staff, Clark Energy found that Geneva Trusty had an unpaid balance for electric service. Since the assistance voucher was in the name of Geneva Trusty and proof had to be presented to Kentucky River Foothills office in order to obtain the LIHEAP assistance voucher regarding Geneva Trusty living in the household receiving the assistance, Clark Energy transferred the unpaid balance from Geneva Trusty's account to the address where Geneva Trusty was now receiving assistance for electric service.<sup>9</sup>

When asked for any provisions of its tariff or law that would permit Geneva Trusty's debt to be applied to Katrina Trusty's account, Clark Energy stated:

Clark Energy has no tariff provisions and is unaware of any provisions of federal or state law that specifically permits the transfer of Geneva Trusty's balance to Katrina Trusty's account. However, Clark Energy has no tariff provisions which specifically outline the methodology utilized for collection efforts. Clark Energy also respectfully states being unaware of any provisions of federal or state law that prohibits the transfer of Geneva Trusty's balance to Katrina Trusty's account, once it is established that Geneva Trusty lives in the household with Katrina Trusty.

Clark Energy based this transfer on language found in 807 KAR 5:006 Section 15 (1)(d) which states "a utility shall not be required to furnish new service to a person contracting for service who is indebted to the utility for service furnished or other tariffed charges until that person contracting for service has paid his indebtedness." Clark Energy is aware that the account which the balance was transferred to is in Katrina Trusty's name rather than Geneva Trusty. Nevertheless, based on the fact that LIHEAP vouchers were issued to Geneva Trusty for assistance with Katrina Trusty's account, Clark Energy takes the position that this establishes a co-ownership on the account which justifies the transfer. Clark

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<sup>8</sup> Answer at 2.

<sup>9</sup> Answer at 2.

Energy respectfully states that the balance transfer was made in good faith on behalf of its membership to assist in the collection of past due accounts.<sup>10</sup>

### DISCUSSION AND FINDINGS

Clark Energy does not dispute the relevant facts alleged by Katrina Trusty. Rather, Clark Energy takes the position that it was authorized to transfer the debt to Katrina Trusty's account by 807 KAR 5:006, Section 15(1)(d), which permits a utility to refuse new service to someone who is indebted to the utility. However, Katrina Trusty was not indebted to Clark Energy at the time she initiated new service, and more importantly, Clark Energy did not refuse to issue Katrina Trusty a new account, so 807 KAR 5:006, Section 15(1)(d) would not even be applicable to the situation at issue. Further, 807 KAR 5:006, Section 15(1)(f) does not allow termination of service at one address for nonpayment for service at a different service address, so it would generally prohibit Clark Energy from using the nonpayment of Geneva Trusty's existing balance as a basis for terminating Katrina Trusty's service at a different address.

Most importantly, KRS 278.160(2) prohibits a utility from charging, demanding, collecting, or receiving from a person more or less compensation for service than the amount prescribed in the utility's tariff. Clark Energy acknowledged that there was nothing in its tariff that authorized it to transfer Geneva Trusty's balance to Katrina Trusty's account, and thereby, charge Katrina Trusty for those amounts in order to

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<sup>10</sup> Clark Energy's Response to Commission Staff's First Request for Information (filed Oct. 31, 2022), Item 4.

continuing receiving service.<sup>11</sup> Thus, having reviewed the record and being otherwise sufficiently advised, the Commission finds that Clark Energy violated KRS 278.160(2) by transferring and attempting to collect from Katrina Trusty the amount owed by her mother for service rendered at a different residence and under a different account.<sup>12</sup>

IT IS HEREBY ORDERED that:

1. Clark Energy shall not charge, demand, or collect from Katrina Trusty for service rendered or to be rendered at 5803 Furnace Road the amounts owed by Geneva Trusty for service rendered at 5823 Furnace Road.
2. Geneva Trusty's balance shall be removed from Katrina Trusty's account.
3. Clark Energy shall not terminate Katrina Trusty's service for failure of any person to pay any portion of the balance of Geneva Trusty's account.
4. The case is closed and removed from the Commission's docket.

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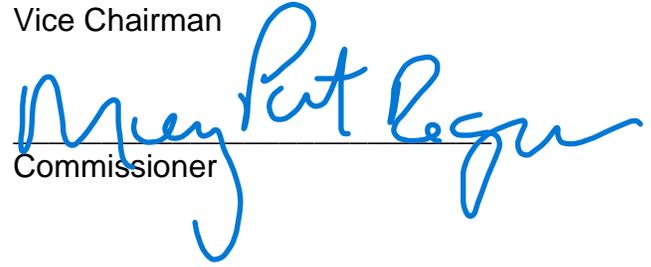
<sup>11</sup> 807 KAR 5:041, Section 9(2) would also generally prohibit Clark Energy from charging Katrina Trusty's account for service rendered at 5803 Furnace Road for amounts owed by her mother for service rendered at a completely separate address, because it requires a utility to treat separate points of service as separate customers.

<sup>12</sup> Further, a general rule of creditor-debtor law is that a person is not liable for debt except by contract or operation of law. *See, generally* C.J.S. Debt § 6 (2022). No such contract or law applies to the present case.

PUBLIC SERVICE COMMISSION

  
Chairman

Vice Chairman

  
Commissioner



ATTEST:

  
Executive Director

Katrina Trusty  
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