

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

LESLEY VOWELS)	
)	
COMPLAINANT)	
)	CASE NO.
V.)	2023-00288
)	
LOUISVILLE GAS AND ELECTRIC COMPANY)	
)	
DEFENDANT)	

ORDER

On December 7, 2023, Lesley Vowels filed a document referred to as a Notice of Appeal and Motion to Stay in her complaint case against Louisville Gas and Electric Company (LG&E). Ms. Vowels' filing was filed with the Commission, but also references a potential Circuit Court filing. Since no Circuit Court filing has been effectuated as of the issuance of this Order, the Commission shall treat Ms. Vowels' filing with the Commission as a motion for rehearing subject to the provisions of KRS 278.400. Regardless, the Commission must address Ms. Vowels' motion for stay, which seeks to enjoin LG&E from disconnecting her service.

LEGAL STANDARD

Under KRS 278.400, which establishes the standard of review for rehearing motions, rehearing is limited to new evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when

“the evidence presented leaves no room for difference of opinion among reasonable minds.”¹ An Order can only be unlawful if it violates a state or federal statute or constitutional provision.² By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

Regarding Ms. Vowels’ motion for stay, injunctive relief is outside the jurisdiction of the Commission. KRS 278.410(3) permits the Circuit Court to grant injunctive relief in the manner and upon the terms provided by law. Further, KRS 278.390 permits the Commission, in its discretion, to seek injunctive relief from the Circuit Court to compel compliance with its orders, and KRS 278.990 permits the Commission to impose penalties in certain circumstances in which a utility fails to comply with a Commission order. However, no provision KRS Chapter 278 permits the Commission to directly enjoin a utility from taking an action.

BACKGROUND

On August 28, 2023, Ms. Vowels tendered a formal complaint with the Commission against LG&E, alleging that she was billed twice for the same balance totaling \$1,474.30. On October 4, 2023, the Commission issued an Order stating that it was unable to determine whether Ms. Vowels established a *prima facie* case pursuant to 807 KAR

¹ *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

² *Public Service Comm’n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm’n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

5:001, Section 20(4)(a), because she did not provide adequate proof of payment, which was an indispensable element of establishing that she paid her balance as claimed. The Order required Ms. Vowels to file into the record proof of honored payment and indicated what constituted acceptable forms of proof. The Order also required LG&E to provide any documentation indicating that any attempted payment by Ms. Vowels was dishonored.

Ms. Vowels filed a response that did not include any additional documentation.³ LG&E filed a response indicating that Ms. Vowels' payments were charged back by Paymentus, the payment processor, because Ms. Vowels disputed the payment.⁴

On October 24, 2023, the Commission issued an Order rejecting Ms. Vowels' complaint for failing to establish a *prima facie* case because she did not provide the requested information. Pursuant to 807 KAR 5:001, Section 20(4)(a)(1), Ms. Vowels was permitted to amend her complaint within 20 days of service of the Order.

On November 10, 2023, Ms. Vowels filed a document into the record consisting of a photograph of a letter from PNC Bank stating as follows:⁵

Here's what happened: You contacted us recently regarding a card transaction(s) dispute in the total amount of \$1,479.30.

What to expect: Our investigation of your claim is complete. As a result, the provisional (temporary) credit totaling \$1,479.30, and applicable fees previously credited to your account are now final.

³ Lesley Vowels Response to Commission Staff's First Request for Information (filed Oct. 13, 2023).

⁴ LG&E's Response to Commission Staff's First Request for Information (LG&E's Response to Staff's First Request), Item 2 (filed Oct. 13, 2023).

⁵ Lesley Vowels Additional Information (filed Nov. 10, 2023).

Therefore, according to Ms. Vowels's bank, the payment to LG&E was reversed and credited back to her account. The Commission issued an Order on December 1, 2023, dismissing Ms. Vowels' complaint, noting that the information provided by Ms. Vowels from PNC Bank was dispositive evidence that her payment to LG&E was reversed.

DISCUSSION AND FINDINGS

Ms. Vowels' December 7, 2023 filing disputes the Commission's Order dismissing her complaint as follows. She stated that the Commission's investigation was incomplete because the Commission did not further investigate "PNC's legal reason my provisional credit was final after PNC's investigation" and suggested that the Commission should have contacted a PNC Bank dispute resolution specialist for more information.⁶

Although Ms. Vowels believes additional evidence may be available, she has not obtained or filed it. Therefore, she has not established that new, previously unavailable evidence exists or that any additional evidence exists. Furthermore, the Commission's role in an adversarial proceeding is not to uncover evidence on behalf of one party after that party has already provided evidence disproving the complaint.

Ms. Vowels has also not argued that any other aspects of the Order dismissing the complaint were the result of material errors or omissions, or unreasonable or unlawful findings. She provided evidence that she disputed the payment to LG&E with her bank and her bank credited the attempted payment back to her bank account. Ms. Vowels had

⁶ The Commission notes that all filings are subject to the provisions of 807 KAR 5:001, Section 4(10)(a)(7), which require redaction of individuals' email addresses. Ms. Vowels' filing included the dispute resolution specialist's name and email address. This information has been redacted by the Commission.

four opportunities⁷ to provide evidence that her payment was consummated and was unable to do so. Rehearing should be denied.

Regarding Ms. Vowels' request for a stay preventing LG&E from discontinuing her service, the Commission has no jurisdiction to provide injunctive relief enjoining any party from acting. That power is reserved to the Circuit Court under KRS 278.410 and KRS 278.390. Therefore, this request should be denied.

IT IS THEREFORE ORDERED that:

1. Ms. Vowels' Notice of Appeal, to the extent it constitutes a motion for rehearing pursuant to KRS 278.400, is denied.
2. Ms. Vowels Motion for Stay is denied.
3. This matter is dismissed and shall be removed from the Commission's docket.
4. A copy of this Order shall be served upon Ms. Vowels by U.S. mail to 1153 Ellerholt Court, Louisville, Kentucky 40211 and by electronic mail.

⁷ Evidence could have been filed with the original complaint, after the Order requiring her to file proof of payment, with the amended complaint, or with the rehearing request.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
DEC 21 2023
rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


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