

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

WILLIAM C. LOCKNANE)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 93-156
)	
CLARK RURAL ELECTRIC COOPERATIVE)	
CORPORATION)	
)	
DEFENDANT)	

O R D E R

On April 26, 1993, William C. Locknane filed a complaint against Clark Rural Electric Cooperative Corporation ("Clark RECC") for terminating and refusing to reinstate service unless Locknane paid a claimed arrearage and a reconnection fee. By Order of May 4, 1993, Clark RECC was directed by the Commission to satisfy the matter complained of or file a written response to the complaint. On May 17, 1993, Clark RECC filed its response stating that its termination of service and refusal to reinstate service without payment of the arrearage and reconnection fee was in accordance with its rules and regulations on file with this Commission.

A hearing on the complaint was held before the Commission on August 20, 1993. Both parties appeared but neither was represented by counsel.

FINDINGS OF FACT

Clark RECC is a cooperative corporation that owns, controls, and operates facilities used in the transmission and distribution

of electricity to the public, for compensation, for lights, heat, power, or other uses. Its principal offices are in Winchester. Locknane is a resident of Frankfort who owns property in Clark County, served by Clark RECC. On March 22, 1993, Clark RECC terminated service to Locknane for non-payment of bills. Clark RECC refused to restore service until the bills claimed to be past due were paid and Locknane paid a reconnection fee. The parties were unable to reconcile their differences and this complaint followed.

The dispute between the parties began in September 1990 when Locknane received his electric bill for the preceding month. Included on the bill was a \$15 meter reading fee. The rules and regulations filed with the Commission by Clark RECC as a part of its tariff require customers of the utility to read their meters between the first and tenth day of each month and to report those readings to the utility. When paying their bills, customers of the utility are also required to return a stub from the bill upon which there is a place for the meter reading to be recorded. Electric bills are sent to each customer on or about the first day of each month for the preceding month and payment is due ten days later.

When payment is made, the meter readings are taken from the stub and posted in the customer's account. Because the meter readings are used to calculate the next month's bill, the utility must receive them soon after the 10th day of each month for them to be of any use. If a customer fails for three consecutive months to submit his meter readings in time, an employee of the utility is

sent to read the customer's meter and the customer is charged a \$15 meter reading fee. The \$15 meter reading fee is authorized by Clark RECC's rules and regulations.

In 1990 it was Locknane's practice to read his meter after he received the electric bill and then give the meter reading to his wife who paid the bill. Because the Locknane property served by Clark RECC is fairly distant from their home, the bills were often paid late. Apparently that was the case for the three month period preceding September 1990. Although the meter readings were returned with the payment, they were not received by Clark RECC in time to calculate the next month's bill. Consequently, the meter reading for the September bill was taken by an employee of Clark RECC and Locknane was charged a meter reading fee which was added to his bill.

Locknane protested the meter reading fee to Clark RECC but when the utility refused to remove it from the bill, he simply deducted it from the amount charged and paid the difference. Locknane continued this practice each month. However, because Clark RECC has a policy of terminating service only when a delinquent arrearage exceeds \$15, service continued until 1993. Then, as a result of an error in calculating the bill, Locknane allowed the arrearage to exceed \$15 and procedures to terminate his service began.

According to Clark RECC's rules and regulations, service for a delinquent bill can be terminated on ten days notice, but not less than 27 days from the original bill. Termination notices are

generated by computer, then verified by company personnel before being hand-delivered to the United States Post Office for mailing to the customer. Clark RECC sent two termination notices to Locknane, one on February 5, 1993 and the other on March 12, 1993. However, Locknane states that he never received the notices.

CONCLUSIONS OF LAW

Clark RECC is a utility subject to the jurisdiction of this Commission. As a utility, it is required by KRS 278.160 to file a schedule of its rates and conditions for its services. Included among the conditions of services filed by Clark RECC, is Rule and Regulation 28 which states:

METER READING

Each member receiving service will read his meter the 1st of each month and no later than the 10th of each month. In the event that the member fails to read the meter as outlined or fails to notify the cooperative office for three (3) successive months, the cooperative will read the same meter and bill the member \$15 for this service.

The central issue in this dispute concerns the proper interpretation of this regulation.

Unless they are disapproved, rules and regulations of a utility filed with this Commission have the same force and effect as rules and regulations promulgated by the Commission. Chesapeake & O. Ry. Co. vs. Gorman, 188 S. W. 2d, 316, 318, (1945). Clark RECC's rules and regulations, therefore, are subject to the same rules of construction that apply to the Commission's regulations,

which in turn are subject to the same rules of construction applicable to statutes. Revenue Cabinet vs. Joy Technologies, Inc., KY.APP., 838 S.W. 2d 406, 409 (1992).

The meter reading regulation adopted by Clark RECC gives the utility both a right and a remedy. As such, its provisions must be strictly followed in all respects. Evans vs. Kroh, Ky., 284 S.W. 2d 329, 330 (1956). Clark RECC did not do so in this case but, instead, charged the fee under circumstances not authorized by the regulation.

During the course of the hearing, the hearing examiner observed that the regulation promulgated by Clark RECC allowed the utility to send a meter reader to read a customer's meter whenever the customer failed to submit a meter reading for three consecutive months. Upon careful examination of the regulation, it is clear that the hearing examiner's observation misrepresents the provisions of the regulation.

Although the clear purpose of the utility's regulation is to encourage customers to read their meters for billing purposes, there is no provision in the regulation that the meter readings be submitted within a prescribed time period for each month. The meter reading fee is only authorized if the customer fails to read the meter between the first and tenth of each month or submit a meter reading for three consecutive months. The evidence in this case is that Locknane did in fact read his meter before the tenth day of each month and although the readings may have been submitted after the tenth day of the month, they were still submitted every month.

Therefore, Locknane complied with the regulation and Clark RECC's imposition of the meter reading fee was improper.

Since all subsequent actions taken by Clark RECC were based upon Locknane's failure to pay the fee, those actions were also unauthorized. Therefore, Clark RECC should adjust Locknane's electric bill by removing any charges related to the meter reading fee and the disconnection of service. If any arrearage remains, upon its payment Clark RECC should restore service to Locknane at no additional charge.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

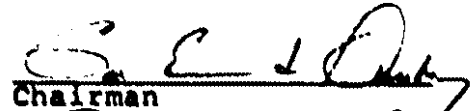
1. Clark RECC shall within 20 days from the date of this Order calculate any arrearage owed by Locknane after removing from his account the meter reading charge, disconnection fee, and any other charges arising from the termination of service and the imposition of the meter reading fee.

2. Upon payment of any arrearage found to be due, Clark RECC shall restore service to Locknane at its own cost.


Done at Frankfort, Kentucky, this

9th day of November, 1993.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director