

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BEREA HEALTHCARE CENTER)	
)	
COMPLAINANT)	
V.)	CASE NO.
)	99-344
BLUE GRASS ENERGY COOPERATIVE CORPORATION)	
)	
DEFENDANT)	

ORDER

On August 10, 1999, Berea Healthcare Center (BHC) filed a complaint against Blue Grass Energy Cooperative Corporation (Blue Grass) charging that Blue Grass did not inform it of the lowest rate available to it as a large volume user and therefore over-charged it approximately \$15,000 from April 1997 to April 1999. On September 3, 1999, the Commission, by Order, directed Blue Grass to file a written response to, or to satisfy, the complaint. Pursuant to that Order, Blue Grass filed an answer on September 7, 1999.

BHC states that, as a result of the April 1997 renovation and enlargement of its nursing home, its electrical service went from a 200-amp panel to a 1,600-amp service. BHC asserts that Blue Grass was "undoubtedly" involved in the renovation, and therefore knew or should have known that a lower rate, LP-1 Large Power, was available to BHC. BHC contends that, until January 1999, when a Blue Grass representative informed it of the availability of its option to execute a contract for the LP-1 Large Power rate, it operated under the mistaken belief that it was being billed at the

lowest applicable rate. BHC claims Blue Grass explained its failure to inform BHC of the lower available rate so that it could obtain a one-year history upon which it could make a recommendation. BHC claims it would have opted for the LP-1 Large Power rate as early as 1997 had it been made aware of its eligibility for that rate. It requests reimbursement for the alleged over-billing that occurred from April 1, 1997 to April 1, 1999.

Blue Grass denies that BHC is entitled to the relief requested, recounting in some detail negotiations with representatives of BHC in which those representatives allegedly hesitated from January 1999 through most of March 1999 to execute the agreement which, pursuant to Blue Grass's tariff, is a prerequisite for obtaining the LP-1 Large Power rate. Blue Grass asserts that BHC was on actual, as well as constructive notice of its rates because BHC received a summary of rates with each monthly billing statement and because the Blue Grass tariff is on file with the Public Service Commission. Blue Grass also points out that the LP-1 Large Power rate is not available unless the customer has signed an agreement ensuring continuity of demand for the contract term and that, if it is required to refund the difference between the LP-1 Large Power rate and the C-1 commercial and industrial rate BHC actually paid, its tariff would be violated.

The parties agree that in March of 1999, BHC submitted a signed agreement for the LP-1 Large Power rate, and was placed on that rate March 30, 1999.

Based on the evidence of record and being otherwise sufficiently advised, the Commission finds that this case should be dismissed as a matter of law. The Commission has not imposed upon utilities an affirmative duty to provide notice of

alternative tariffs beyond that provided by Blue Grass here. The applicable tariff has been publicly available at the offices of the Commission and Blue Grass pursuant to KRS 278.160 and 807 KAR 5:011. Moreover, Blue Grass states, and BHC does not dispute, that Blue Grass furnished BHC a summary of its rates with its monthly billing statements.

Next, requiring Blue Grass to give BHC the benefit of the LP-1 Large Power rate for any period of time prior to the execution of the contract would violate both Blue Grass's tariff and settled Kentucky law. The LP-1 Large Power rate is an optional rate available only to customers who agree to be bound for an extended period of time. Until March of 1999, BHC had executed no such agreement. Accordingly, BHC did not receive the benefit of the demand assurance which constitutes part of the consideration for the LP-1 Large Power rate. Retroactive application of the LP-1 Large Power rate would accord more favorable treatment to BHC than that received by Blue Grass's other customers, in violation of KRS 278.160(2).

Finally, BHC does not allege that it was ever misled by Blue Grass in response to any billing inquiry. See 807 KAR 5:006, Section 4 ("[t]he utility shall, *on request*, give its customers or prospective customers such information as is reasonably possible in order that they may secure safe, efficient and continuous service") (emphasis added). The rule is similar elsewhere. See, e.g., Luntz Corp. v. Ohio Edison Co., C.N. 94-1783-EL-CSS (Ohio P.U.C. 1996)(an electric utility must inform customers of alternative tariffs for which the customer is eligible only upon inquiry by the customer). We decline BHC's invitation to impose upon electric utilities a duty to provide customers with information beyond that required by Kentucky statutes and regulations.

IT IS THEREFORE ORDERED that the complaint of BHC is dismissed.

Done at Frankfort, Kentucky, this 5th day of November, 1999.

By the Commission

ATTEST:

Executive Director