

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DONALD D. WEBER)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 2000-066
)	
THE UNION LIGHT, HEAT AND)	
POWER COMPANY)	
)	
DEFENDANT)	

O R D E R

This case arises from a complaint filed on January 28, 2000 by Donald D. Weber (“Complainant”) against The Union Light, Heat and Power Company (“ULH&P”). The complaint alleged that ULH&P improperly charged Complainant for repair to a gas line on Complainant’s property. The gravamen of the complaint was that Complainant believed the section of the repaired line was ULH&P’s responsibility. The Complainant requested that he be exempt from paying ULH&P \$740.00 for repair of a gas line on his property. ULH&P filed its Answer on March 9, 2000, denying it improperly charged Complainant for the repair and further stating that, under applicable law, the section of the pipe in question was Complainant’s responsibility.

A hearing on the complaint was held before the Commission Hearing Examiner on June 28, 2000. Both parties appeared at the hearing. Michael J. Pahutski and John J. Finnigan, Jr. appeared for ULH&P, and Complainant appeared *pro se*.

Statement of Facts

The subject of the complaint was the repair of a gas leak on Complainant's property. The section of line in question ran from the curb (shut-off valve) to the stopcock valve in Complainant's house. Complainant contended that ULH&P was responsible for the repair costs. Complainant claims to have seen ULH&P perform similar repairs on nearby property for which ULH&P did not charge the customer. Complainant also called the Commission's Consumer Services Division and alleges that he was told that ULH&P was responsible for the portion of line in dispute. Complainant indicated that ULH&P never made him explicitly aware that he would be responsible for the line. At the hearing, Complainant argued that even if ULH&P's current tariff provides that the pipe is the customer's responsibility, his lines were laid in the 1930's and at that time the pipe was the utility's responsibility; accordingly, he contended, a "grandfather" law should apply to the lines on his property. No law supports such an assertion.

ULH&P contended that, according to its tariff filed with the Commission on May 24, 1992 and 807 KAR 5:022, Section 9(17), Complainant is responsible for the repairs of the line. 807 KAR 5:022, Section 9(17), states that either the utility or the consumer, at the utility's option, can be responsible for the portion of the line leading from the curb into the customer's house. ULH&P's tariff contains a provision that the customer is responsible for the section of line leading from the curb to the meter.

At the hearing ULH&P's first witness, William P. Hertenberg, a Service Man for ULH&P, testified that he was the ULH&P employee who first discovered the leak in Complainant's line. Mr. Hertenberg then called ULH&P's construction and

maintenance dispatch in order to report the leak and turned the gas off to prevent a hazard. Complainant arrived at the time Mr. Hertenberg was turning off the gas and Mr. Hertenberg showed Complainant the leak and informed Complainant that the portion of the line with the leak was the customer's responsibility. Mr. Hertenberg testified that, from Complainant's reaction, he believed that Complainant understood that the customer was responsible for that portion of the pipe.

ULH&P next called Donald Rottinghaus to testify. As the manager of Rates Services for Cinergy, it is Mr. Rottinghaus' duty to prepare and administer all of Cinergy's tariffs, including ULH&P's tariffs. Through Mr. Rottinghaus, ULH&P introduced ULH&P's Gas Tariff Ky. P.S.C. Gas No. 5, Sheet No. 21.1. The relevant part of this tariff states that "the Customer assumes responsibility on Customer's side of the point of delivery" for the service taken as well as the maintenance and installation of all equipment associated with that service. The Customer's Responsibility provisions of Sheet 21.1 further define the "Customer's side of the point of delivery" as the "outlet side of the Company's pipe where connected to the curb valve." Mr. Rottinghaus then testified that the Customer Responsibility Section of Sheet 21.1 is in full accord with 807 KAR 5:022, Section 9(17). 807 KAR 5:022, Section 9(17), provides that the customer, or the utility at its prerogative, may assume responsibility of the gas line from the customer's point of delivery to the meter. Mr. Rottinghaus testified that Sheet 21.1 was specifically drafted so that ULH&P would not be responsible for the gas lines on the customer's side of delivery. Furthermore, Mr. Rottinghaus concluded, the portion of the pipe repaired on Complainant's property clearly falls within the portion of the line for which the customer was responsible. Mr. Rottinghaus knew of no situations in which

ULH&P replaced free of charge to the customer a portion of a line for which the customer is responsible. Upon rebuttal, ULH&P introduced a copy of ULH&P's 1954 tariff filed with the PSC. The 1954 tariff contained the same language as the 1992 tariff in regard to the customer's responsibility from the point of delivery into the customer's house.

ULH&P then called David Muck to testify. Mr. Muck is a Mechanic Operator I for ULH&P. Mr. Muck's duties include the repair and installation of ULH&P's gas lines to customers' homes; he was also the person dispatched to Complainant's residence to repair the gas leak. Upon arrival at Complainant's property, Mr. Muck administered a variety of tests to determine if there was a leak. Mr. Muck found that the leak was located on the section of the line located between the curb valve and the stopcock valve in the house. Mr. Muck testified that at this point he informed Complainant that the leak was on a portion of the line for which Complainant was responsible.

Mr. Muck then tried to repair the line by inserting a plastic pipe into the old line, but was unable to do so because of "elbow joints" in the old pipeline. He told Complainant that the line would have to be mechanically replaced. Mr. Muck testified that he informed Complainant that Complainant could have either ULH&P replace the line or call a plumber to have the line replaced. At this time Complainant said he wanted ULH&P to replace the line. Mr. Muck then presented to Complainant ULH&P's standard Service Agreement and quoted Complainant a price of \$740.00 for repair of the line by referring to ULH&P's standard rate card. The Service Agreement stated the customer was responsible for the replacement of that portion of the service line. Mr. Muck testified that he never gave Complainant any indication that anyone other than

Complainant would be responsible for the replacement of the pipe. ULH&P presented no other witnesses.

Conclusions of Law

Having reviewed the evidence on record, and being otherwise sufficiently advised, the Commission finds:

1. 807 KAR 5:022, Section 9(17), states that the consumer, or the utility at its prerogative, may be held responsible for the maintenance and upkeep of the service line on the customer's side from the point of delivery. Thus, by default, the responsibility for that section of the line lies with the customer, and the responsibility shifts only when the utility announces its desire to be responsible for that portion of the service line. In this case, ULH&P introduced into evidence its current tariff, effective in 1992, and the preceding tariff, effective in 1954. The language in both tariffs holds the customer responsible for the service line on the customer's side of the point of delivery. Both tariffs clearly indicate that ULH&P did not accept responsibility for that part of the service line.

Repeatedly ULH&P's employees informed Complainant that he was responsible for the portion of the line that Mr. Muck repaired. Complainant also signed a Service Agreement, which named him as the payor, with ULH&P to repair the line after he was told by Mr. Hertenberg and Mr. Muck that he was responsible for the line. Complainant's understanding of the applicable law, which allegedly was based upon advice received from a Commission Staff member, is incorrect.

2. Complainant also argued that even if the current tariffs place the responsibility of the line upon him, his line was installed prior to either the 1992 or 1954

tariff and earlier tariffs should apply to his line under what he called a “grandfather clause.” No such clause exists in the tariff and, regardless of what any earlier tariff provided, the applicable tariff is the current one.

3. Pursuant to 807 KAR 5:022, Section 9(17), and ULH&P’s current tariff, Complainant is responsible for the \$740.00 charge for repair of the service line on the customer’s side of the point of delivery.

IT IS THEREFORE ORDERED that:

1. The Commission finds in favor of ULH&P.
2. Complainant is responsible for the repairs made to the service line in question.
3. The complaint is dismissed with prejudice and removed from the Commission’s docket.

Done at Frankfort, Kentucky, this 4th day of August, 2000.

By the Commission

ATTEST:



Executive Director, Acting