

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

WILLIAM H. MARTIN NORTHERN)	
KENTUCKY COMMUNITY CENTER)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 2002-00063
)	
THE UNION LIGHT, HEAT AND)	
POWER COMPANY)	
)	
DEFENDANT)	

O R D E R

On February 27, 2002, the William H. Martin Northern Kentucky Community Center (Martin Center) filed a formal complaint against The Union Light, Heat and Power Company (ULH&P) alleging that ULH&P is acting unreasonably in its attempts to collect past-due amounts owed by Martin Center. Specifically, Martin Center alleges that ULH&P is not offering a reasonable partial-payment plan. Martin Center alleges that all payment plans it entered into with ULH&P are unreasonable because it entered into them under duress and without being informed of its rights as a customer.

FACTS

Martin Center is a multi-purpose structure from which various services are provided to the African-American Community of Covington, Kentucky. Among the services offered are daycare; food to those in need; help to families in forestalling eviction; and many youth-oriented activities.

During the period from November 2000 through February 2001, Martin Center claims it incurred a natural gas bill in excess of \$80,000 due in part to a troublesome boiler, the record cold temperatures, and abnormally high natural gas prices. At some point in 2001, the United Way withdrew its funding for Martin Center, leaving Martin Center unable to meet certain financial obligations, including its account with ULH&P.

ULH&P and Martin Center disagree about the events prior to and subsequent to the negotiations between the two parties. Martin Center claims that, as early as May 2001, it has been in negotiations with representatives of ULH&P, seeking to establish a partial-payment plan. Martin Center claims that the negotiations began when Martin Center received a demand note from ULH&P informing Martin Center that it must pay its entire past-due account balance or have its gas service terminated. Martin Center alleges that the ULH&P representative with whom it negotiated never allowed Martin Center to agree to a term that was manageable. Failing to agree on the terms of a partial-payment plan, ULH&P informed Martin Center that ULH&P would terminate Martin Center's gas service in the beginning of June.

ULH&P claims that it terminated Martin Center's service on May 15, 2001 because of nonpayment of an account balance of \$80,433.59. Soon thereafter, ULH&P claims, it and Martin Center entered into an oral partial-payment agreement under which Martin Center agreed to pay \$25,000 toward the outstanding balance in order to restore gas service. Martin Center also agreed to pay an additional \$10,000 toward the outstanding balance by June 15, 2001, with the remainder of the balance due within 2 months. According to ULH&P records, Martin Center made two payments of \$15,000

and \$4,000, respectively, on June 1, 2001, and one payment of \$6,000 on June 4, 2001.

On June 4, 2001, ULH&P restored Martin Center's gas service although Martin Center did not make the agreed-upon \$10,000 payment until June 29, 2001. ULH&P claims that on July 11, 2001, it received a letter from Martin Center in which Martin Center stated it believed it would be able to pay \$5,000 per month plus current charges. Martin Center claims it entered into this verbal partial-payment plan with ULH&P in August 2001. ULH&P claims that on July 31, 2001, Martin Center paid \$6,000 toward its outstanding balance. Martin Center paid \$5,000 on September 4, 2001 and another payment of \$5,000 on October 12, 2001.

Martin Center alleges that a representative from ULH&P made a practice of calling Martin Center, threatening to disconnect its natural gas service unless ULH&P received all monies. ULH&P claims that a ULH&P employee called Martin Center on October 25, 2001, offering Martin Center an agreement to pay \$11,340 per month in addition to its current charges in order not to be disconnected. ULH&P claims that on October 30, 2001, Martin Center countered that it could pay \$5,000 to \$7,500 by November 15, 2001, and the entire balance by December 31, 2001. ULH&P allegedly accepted this offer. Martin Center, in its complaint, makes no mention of the partial-payment plan of October 30, 2001.

ULH&P claims that when no payment was received by November 15, 2001, it contacted Martin Center on November 26, 2001, explaining that ULH&P would need a payment of \$34,000 by December 5, 2001 or service would be disconnected. ULH&P claims that on December 4, 2001, it agreed to accept \$21,497 by December 7, 2001, of

which \$6,300 would be applied to the deposit with the remainder of the balance due over the next 2 months. On December 6, 2001, Martin Center paid \$20,500. Purportedly on December 10, 2001, Martin Center agreed that its balance would be paid in full by January 31, 2002.

ULH&P claims that it received no further payments from Martin Center by January 31, 2002. Instead, an agent for DTL Development, LLC (DTL) contacted ULH&P and sought to place Martin Center s account in DTL s name.

DISCUSSION

The parties disagree as to many of the facts of this case. However, prior to establishing facts, we must determine Martin Center s rights as a customer.

The gravamen of Martin Center s complaint is that all [payment] agreements were made under duress and that the agreements were invalid because Martin Center was not informed as a consumer as to what our legal rights were.¹ Martin Center requests that the Commission order ULH&P to allow Martin Center a reasonable amount of time to pay its utility bills.

Administrative Regulation 807 KAR 5:006, Section 13(2), provides, in pertinent part, that:

Each utility shall negotiate and accept reasonable partial payment plans at the request of *residential* customers who have received a termination notice for failure to pay except that a utility is not required to negotiate a partial payment plan with a customer who is delinquent under a previous partial payment plan. Partial payment plans shall be mutually agreed upon and subject to the conditions in this section and Section 14 of this administrative regulation. Partial payment plans which extend for a period longer than thirty (30) days shall be in writing and shall advise customers that service

¹ Complaint at 2.

may be terminated without additional notice if the customer fails to meet the obligations of the plan. (Emphasis added).

Pursuant to Administrative Regulation 807 KAR 5:006, Section 13(2), in order for a utility customer to qualify for a partial-payment plan a utility customer (1) must be classified as residential, (2) must have received a termination notice, and (3) must not be delinquent under a previous partial-payment plan. If those criteria are not met, a utility is not required to offer a partial-payment plan.

It is undisputed that ULH&P sent Martin Center a termination notice. However, Martin Center is not considered a residential customer. We do not, therefore, reach the issue as to whether Martin County is delinquent under another partial-payment plan.

ULH&P's tariff defines residential service as applicable to:

Firm natural gas service required for all domestic purposes in private residences, single occupancy apartments, and common use areas of multi-occupancy buildings, when supplied at one point of delivery.

ULH&P's Gas Tariff, Sheet No. 30.56. Martin Center does not meet the criteria listed above.

Administrative Regulation 807 KAR 5:006, Section 14(f), provides that a utility may terminate service at a point of delivery for nonpayment of charges incurred for utility service at that point of delivery. Martin Center states, [w]e fully acknowledge that it was a good debt,² thus admitting its debt to ULH&P. Martin Center simply disputes the manner in which ULH&P seeks to collect the past-due balance.

The Commission is aware of no provision of law entitling Martin Center to a partial-payment plan. Moreover, Martin Center's billing history indicates that ULH&P

² Complaint at 2.

has been exceptionally lenient by not disconnecting Martin Center's gas service. However, Martin Center may, if it desires, file a written brief stating any provision of law which it believes entitles it to a partial-payment plan or to any particular terms of such a plan. Said brief shall also address the reasons Martin Center believes that it, and not DTL, is the proper party to bring this complaint.

IT IS THEREFORE ORDERED that:

1. Within 10 days of the date of this Order, Martin Center shall file a written brief as described herein showing cause why this case should not be dismissed as a matter of law.
2. ULH&P shall respond within 10 days of the filing of Martin Center's brief.
3. If the Commission receives no brief within 10 days of the date of this Order, this case shall be dismissed and removed from the Commission's docket without further Order.

Done at Frankfort, Kentucky, this 6th day of May, 2002.

By the Commission

ATTEST:

Deputy W. H. Fowler
Executive Director