

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SHERRY ANN GOOD D/B/A SUN PALACE)	
)	CASE NO. 2006-00496
COMPLAINANT)	
V.)	
)	
KENTUCKY UTILITIES COMPANY)	
)	
DEFENDANT)	

O R D E R

On November 20, 2006, Sherry Ann Good filed a complaint with the Commission against Kentucky Utilities Company (“KU”). In her complaint, Ms. Good states that she is the sole proprietor of Sun Palace, a tanning salon business. Ms. Good purchased Sun Palace from its previous owner, Janice Jones, in May 2003. KU states that it does not have any record that it was informed that Ms. Good had purchased the business.¹ Sun Palace maintains an account with KU for the provision of electric service at its business location of 1906 Cumberland Avenue, Middlesboro, Kentucky, in Bell County.²

¹ KU states that if it had become aware that Ms. Good had become the new owner of Sun Palace, that information would have been noted in the account records, the account numbers would have been changed, and KU would have read and inspected the meters in accordance with Commission regulations. See Answer and Motion for Informal Conference at 2. See also 807 KAR 5:006, Section 13(3), and KU’s Response to Commission Staff’s First Data Request, Item No. 6, filed February 12, 2007.

² The account that is the subject of the dispute is [REDACTED]. Sun Palace also has a second account with KU, [REDACTED], which exclusively monitors electric usage for the business’s heat pump.

Given that Ms. Good filed this action based on service provided under the business name of "Sun Palace," hereinafter the Commission shall refer to Sun Palace as the complaining party.

In the complaint, Sun Palace alleges that KU has incorrectly billed the business for \$4,778.07 for electricity consumed by Sun Palace for 2 years. KU responded to the complaint and admitted that in August 2005, during the normal course of fulfilling its sample meter testing requirements,³ it discovered that the service meter and base for Sun Palace were both defective and needed to be replaced.⁴ The meter and the base were both burned and could not be placed back into service.⁵ KU installed a new meter at Sun Palace.⁶ After discovering the defective performance of the meter, KU concluded

³ KU's approved sample meter testing plan deviates from the standard testing requirements outlined in 807 KAR 5:041, Section 15. Petitions by utilities for Commission approval to deviate from the standard testing schedule are permitted pursuant to 807 KAR 5:041, Section 16. In Case No. 2005-00276, Joint Application of Inter-County Energy Cooperative Corp., Kentucky Power Company, Kentucky Utilities Company, Louisville Gas and Electric Company, Owen Electric Cooperative, Inc., Shelby Energy Cooperative, Inc. and The Union Light Heat and Power Company for Approval of a Pilot Meter Testing Plan Pursuant to 807 KAR 5:041, Sections 13, 15, 16, 17 and 22, by Order dated November 10, 2005, the Commission permanently approved KU's request to institute a sample meter testing plan. Prior to this Order, the Commission approved a sample meter test plan for KU as a 5-year pilot program in Case No. 1999-00441, Joint Application of Inter-County Energy Cooperative Corp., Kentucky Power Company, d/b/a American Electric Power, Kentucky Utilities Company, Louisville Gas and Electric, Owen Electric Cooperative, Shelby Energy Cooperative, The Union Light, Heat and Power Company Collectively Called ("Utilities") for Approval of a Pilot Meter Testing Plan Pursuant to 807 KAR 5:041, Sections 13, 15, 16, 17 and 22, by Order dated December 12, 2000.

⁴ Meter # M408432. See KU's Answer and Motion for Informal Conference at 3.

⁵ KU's Response to Commission Staff's First Data Request, Item No. 3, filed February 12, 2007. See also Answer and Motion for Informal Conference at 3.

⁶ Meter #C406361. See KU's Answer and Motion for Informal Conference at 3.

that Sun Palace had not been billed for portions of its actual electric usage for a period of time. The last time that specific meter had been tested was May 14, 1996.⁷

KU states that it billed Sun Palace for previous unbilled amounts for service rendered from September 2003 to August 2005. By operation of KRS 278.225, KU is required to bill for service within 2 years of the date that service is provided. Although KU alleges that Sun Palace had likely been unbilled for several years, customers cannot be held liable for service that is unbilled prior to that 2-year period unless the customer obtained the service through fraud, theft, or deception.

KU developed an estimate as to Sun Palace's usage for the prior 2 years based upon a 7-day read conducted from the new meter in August 2005. Based on that 7-day read, KU determined that the underbilled amount total due from Sun Palace is \$4,778.07. This figure is based on estimated usage from September 2003 to August 2005, which is the 2-year time span limit mandated under KRS 278.225. KU argues that this estimate is conservative, based on the readings from the new meter, as well as other factors.⁸ In September 2005, KU offered a payment arrangement to Sun Palace to "minimize any monthly financial impact this situation [may have] caused."⁹

In its complaint, Sun Palace contends that the estimated usage extending back for a 2-year service period is unfair, primarily because the 7-day read conducted after

⁷ KU's Response to Commission Staff's First Data Request, Item No. 1, page 4 of 6, filed February 12, 2007.

⁸ On page 3 of the Answer and Motion for Informal Conference, KU states, "this adjustment is conservative based upon readings taken since the meter was replaced in August, 2005, and is most advantageous to Sun Palace, because it is believed that a tanning salon would consume less energy during the month of August."

⁹ Answer and Motion for Informal Conference at 4.

the new meter was installed occurred at a time when Sun Palace had a larger number of tanning units in use than in the previous year and does not factor in the days when the business was closed due to family illness and death. Sun Palace also states that it has a high level of customer business for only a few months out of the year and that KU's estimate also failed to take this factor into proper consideration when it calculated the unbilled amount. Based on these arguments, Sun Palace requests the Commission to order that it is not responsible for the unbilled amount.

DISCUSSION

The Commission is empowered by KRS 278.260 to hear "complaints as to rates or service of any utility." The Commission has the power to dismiss any complaint without a hearing if, in the Commission's opinion, a hearing is not necessary in the public interest or necessary for the protection of substantial rights. KU is an electric utility company subject to the regulation of the Commission. As a public utility, it is required by KRS 278.160(2) to charge uniform rates for its services. The statute states as follows:

No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater than that prescribed in such schedules.

The Commission reviewed the monthly electric bills for Sun Palace, beginning with December 2004 and ending with November 2006.¹⁰ Specifically, the Commission focused on the billing summary and electric charges sections of each bill which outline the kilowatt hour usage and the resulting energy charge. As is common practice in the

¹⁰ Answer and Motion for Informal Conference, Exhibit B.

utility industry, a customer's most recent monthly bill actually reflects the energy usage occurring within the previous month. In the December 2004 bill, the kilowatt hour usage for the prior month is measured at 2, with a resulting cost of \$10.34.¹¹ The average energy usage from January 2005 to June 2005, as stated on the bills, was approximately 16 kilowatt hours per month. The average electric charge for that period was approximately \$11.00. Those bills occurred during the time that Sun Palace's usage was being measured by the defective meter. Conversely, after the new meter was installed, the electric bills issued between September 2005 and February 2006 revealed an average usage of approximately 3,100 kilowatt hours per month. The average electric charge based on that average usage was approximately \$200.00.

Sun Palace stated that from 2003 and until the time a new electric meter was installed in August 2005, the business had 9 to 12 tanning beds and at least 1 stand-up dome in service.¹² Sun Palace also stated that the business operated in a regular and continuous manner, with the exception of being closed on certain days and closing the business early during certain evenings.¹³ Sun Palace also stated that March, April, and May tend to be the only months during the business year in which it maintains a brisk

¹¹ The final electric charge for customers includes the basic customer charge, the energy charge, fuel adjustment costs, and other surcharges and credits. The information is outlined in each monthly electric utility bill.

¹² Sun Palace's Response to Commission Staff's First Data Request, Item No. 1, filed March 6, 2007.

¹³ Sun Palace's Response to Commission Staff's First Data Request, Item No. 3, filed March 6, 2007.

tanning business. Sun Palace described the regular business in other calendar months as “slow” or “very slow.”¹⁴

KU does not explicitly say or estimate how long the meter may have been malfunctioning. Testing for this particular meter had not occurred for more than 9 years. Theoretically, the meter may have been under-reading during a large portion of that period, but, as previously stated, by statute KU could only seek payment of unbilled amounts for the prior 2 years. KU installed the new electric meter at Sun Palace on August 23, 2005, with an index reading of “00000.” To determine if the new meter was conducting accurate measurements, KU again read the meter on August 25, 2005, and recorded an index reading of “00222.” A third reading was conducted on August 30, 2005, and the meter had an index reading of “00765.”¹⁵

Based on Sun Palace’s answer that only March, April, and May qualify as brisk months for business, Sun Palace likely benefited from the fact that KU conducted the 7-day read of the new meter in the month of August. This 7-day read formed the basis for the 2-year estimated bill which KU alleges Sun Palace currently owes. By Sun Palace’s admission, August was a month of low performance for the tanning salon, thereby resulting in a lower use of electricity for the business and, as a consequence, a lower bill for energy use. As previously noted by the Commission, the average electric bill accrued by Sun Palace after the new meter had been installed was approximately \$200.00. By dividing \$4,778.07, the estimated bill owed by Sun Palace, by 24 months, the time period during which the bill was accrued, the resulting figure is approximately

¹⁴ Sun Palace’s Response to Commission Staff’s First Data Request, Item No. 5, filed March 6, 2007.

¹⁵ KU’s Answer and Motion for Informal Conference at 3.

\$199.09 per month. The difference between the estimated monthly electric cost and the actual monthly cost is very minute and almost negligible.¹⁶

KU cannot allow Sun Palace to avoid paying for electricity consumed by the business. This is prohibited under KRS 278.160(2). Having considered Sun Palace's arguments regarding the scope of its daily and regular electric usage, as well as KU's arguments as to the basis for formulating the estimated bill, the Commission finds that \$4,778.07 is a fair and reasonable estimation of Sun Palace's usage from September 2003 to August 2005 and, therefore, Sun Palace's request to be exempted from paying the bill must be denied.

KU previously established payment arrangements for Sun Palace. The Commission finds that, in light of the length of time taken to review and issue a decision on the merits of this complaint, fairness and equity demand that KU continue with a payment plan for the arrearages owed by Sun Palace. However, the Commission finds that the payment plan should be spaced equally over a period of time of not less than 2 years from the date of this Order.¹⁷

IT IS THEREFORE ORDERED that:

1. For the reasons discussed herein, the complaint is dismissed.
2. KU shall establish a payment plan for Sun Palace's estimated bill for a period of not less than 2 years from the date of this Order.

¹⁶ The Commission also notes that it reviewed the Sun Palace electric bills for March, April, and May 2006, as provided by KU. See KU's Answer and Motion for Informal Conference, Exhibit B. By Sun Palace's admission, those are the months when its tanning business is at its highest level. A simple calculation reveals that the average bill for this period was near or about \$465.00.

¹⁷ 807 KAR 5:006, Section 10(2).

3. This matter is closed and shall be removed from the Commission's docket.
4. This Order is final and appealable.

Done at Frankfort, Kentucky, this 30th day of May, 2007.

By the Commission

ATTEST:



Executive Director