

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In The Matter Of:

**ELECTRONIC JOINT APPLICATION OF)
LOUISVILLE GAS AND ELECTRIC)
COMPANY AND KENTUCKY UTILITIES)
COMPANY FOR CERTIFICATES OF)
PUBLIC CONVENIENCE AND NECESSITY)
FOR FULL DEPLOYMENT OF ADVANCED)
METERING SYSTEMS)**

CASE NO. 2018-00005

**POST HEARING BRIEF
OF
ASSOCIATION OF COMMUNITY MINISTRIES, INC.**

FILED: August 10, 2018

INTRODUCTION

In this proceeding, the Commission exercises its jurisdiction under K.R.S. 278.020 to determine whether Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (“the Companies”) have demonstrated a need for their proposed full deployment of Advanced Metering Services (“AMS”) and an absence of wasteful duplication.¹ Should the Commission issue the requested Certificates of Public Convenience and Necessity (“CPCN”), the Companies intend to use the remote service switching AMS will enable to put into place a system for automatically remotely disconnecting the service of low income customers who cannot pay their energy bills. This implicates central aspects of the Commission’s regulatory responsibilities beyond K.R.S. 278.020, and should command the Commission’s attention in evaluating the Companies’ application and fashioning a final order in this case.

The Companies have not yet designed this automatic system, developed critical protocols and procedures or assessed how the new system will affect the overall number of customers losing utility service.² The resultant information void leaves unanswered and currently unanswerable critical questions about how the Companies’ use of this new technology of disconnection will impact low income energy-insecure customers, and the Association of Community Ministries (“ACM”) member agencies to which they turn in times of crisis. As detailed in the testimony filed by ACM and discussed below, potential consequences are very serious. Under these circumstances, it would be premature for the Commission to issue a blanket CPCN allowing LG&E to commence automatic remote disconnections for nonpayment whenever it is ready to do so.

¹ *Kentucky Utilities v. Public Service Commission*, 252 S.W.2d 885 (Ky. 1952).

² Hearing Testimony of Rick E. Lovekamp at 3:40:40 – 3:40:54.

ACM intervened in this proceeding in order to explore the risks AMS deployment may pose to low income customers, and to aid the Commission in minimizing potential harm to the Companies' most vulnerable customers. Towards this end, ACM urges the Commission, should it issue the CPCNs the Companies seek, to do so only subject to the following conditions:

- LG&E is to obtain prior authorization from the Commission before using AMS to remotely disconnect customers for nonpayment;
- Once the Companies have designed the automatic remote disconnection system, including the details of the timing, processes, procedures and protocols germane to remote disconnection for nonpayment, they are to share such with the Commission and the parties to this proceeding;
- LG&E shall conduct an assessment of the effect of the system as designed on the numbers and geographic distribution by zip code of customers subject to disconnection at one time, and share such with the Commission and the parties;
- After LG&E has completed the above steps, the parties shall have an opportunity to recommend additional changes to the terms of service for disconnection for non-payment for the Commission to consider; and
- Prior to implementing remote disconnection for nonpayment, LG&E shall amend its terms of service to provide that in addition to current notice provisions, LG&E must:
 - (i) provide at least one automated voice mail message to all customers for whom LG&E has a phone number of the date and time of the impending disconnection,
 - (ii) offer customers the option of receiving additional notice of disconnection by email, text or voicemail, and

- (iii) offer customers the option of adding notice to an authorized third party (such as a relative or caregiver).³

As discussed below, these conditions are well within the Commission’s statutory authority and regulatory responsibility towards low income, energy-insecure ratepayers.

ARGUMENT

I. LG&E Should Not Be Allowed to Use AMS to Automatically Remotely Disconnect Customers for Nonpayment Before First Providing the Commission Critical and Currently Unavailable Information.

A. The Commission Cannot on This Record Assess the Potential Harm to Energy Insecure Low Income Customers Once Automatic Remote Disconnections for Nonpayment Begin.

Remote service switching (“RSS”) accounts for a significant portion of the savings projected in the cost-benefit analysis accompanying the instant application: according to the Companies’ estimates, about 25% of operational savings would be lost by deploying AMS meters that either did not have RSS capability or were not enabled for RSS.⁴ However, the record in this case reveals that the Companies have not yet made key decisions, designed relevant systems and developed related protocols and procedures. The Commission and the intervenors therefore lack much of the information necessary to evaluate the potential impact of the transition to automatic remote disconnection on the Companies’ most vulnerable customers. Requiring the Companies to provide this missing information to the Commission and the parties when it becomes available, to assess the effect of the design decisions it ultimately makes on the number and

³ Once LG&E provides more specific information about the design and implementation of remote disconnection, additional notice recommendations may be warranted.

⁴ Response of Louisville Gas and Electric Company and Kentucky Utilities Company to Metropolitan Housing Coalition’s Hearing and Post-Hearing Data Requests, No.2.

concentration of disconnections and to afford parties the opportunity to make recommendations to the Commission, as ACM requests, will rectify the consequences of the current lack of information.

These consequences include many crucial unknowns. First and foremost is the timing of automatic remote disconnection once a customer becomes, in the Companies' term, eligible for disconnection -- meaning that a "brown bill" disconnection notice has been issued and no payment received within ten days thereafter.⁵ Timing will have a profound impact on energy insecure customers: the shorter the window between eligibility and automatic shut-off, the less time left to secure third party assistance, complete the often time-consuming process for obtaining a medical certificate, or otherwise marshal resources to maintain service.⁶ And the more concentrated shut-off times are in a given geography, the greater the strain on the capacity of assistance agencies, such as ACM's members, to meet the demand for client appointments and prevent those shut-offs.⁷

If capacity is overwhelmed, some customers will lose service unnecessarily, with what would have been disconnection prevention cases becoming instead reconnection cases.⁸ It may well be that the Companies will use the capabilities of RSS to restore service more quickly than now possible once a customer satisfies the conditions for being reconnected. Those conditions, however, are quite challenging for those in financial

⁵ Response of Louisville Gas and Electric Company and Kentucky Utilities Company to Association of Community Ministries, Inc.'s First Request for Information, No. 37(a) ("ACM 1-37(a)").

⁶ See, e.g. Response of Association of Community Ministries to Commission Staff's Initial Request for Information, No. 4(a).

⁷ Direct Testimony of Michael Ashabraner at 8-9.

⁸ *Id.* at 9-10.

crisis. Whereas disconnection may be prevented with a partial payment and negotiated payment plan,⁹ reconnection requires full payment of past due balances; payment of a reconnection fee; and a substantial deposit (in the LG&E territory, \$260 for combined gas and electric or \$160 for electric-only customers) if the utility is not already holding one.¹⁰ As they struggle to meet these conditions, disconnected households may also be coping with the loss of precious food and medicines requiring refrigeration and health risks due to lack of air conditioning or heat.¹¹

The Companies concede that remote service switching will enable them to disconnect customers for nonpayment more quickly and in greater daily numbers.¹² Currently, disconnections must be executed within a four-day window that begins on the “eligibility” date, after which they become “stale,” and service continues into the next billing cycle.¹³ AMS deployment, in contrast, will give the Companies the capacity to accomplish all such disconnections simultaneously.¹⁴ And while they have indicated that they do not intend to do so, the Companies have been unable thus far to explain what they do intend. They have not yet worked through when or how long after becoming

⁹ *Id.* at 3; see also 807 KAR 5:006 Section 15 (2)(b).

¹⁰ Ashabraner Testimony at 10.

¹¹ *Id.*

¹² Direct Testimony of Rick E. Lovekamp at 5; Response of Louisville Gas and Electric Company and Kentucky Utilities Company to Association of Community Ministries, Inc.’s Second Request for Information, No. 1.

¹³ Response to ACM 1-37(a).

¹⁴ Hearing Testimony of John P. Malloy at 1:21:45 – 1:22:54.

“eligible” a customer’s power will be turned off, or at what time of day.¹⁵ They have not decided how disconnections of customers with the same brown bill/eligibility date will be spread out so as to avoid undue concentrations of disconnected customers on a given day, at a given time or in a given billing tranch or geography.¹⁶ And, perhaps because they have not yet made these key decisions, they have not conducted, and so cannot provide to the Commission, an assessment of the impact of automatic remote disconnection as it will actually be implemented may be expected to have on either the overall or the daily numbers of disconnections.¹⁷

Timing of disconnections is not the only crucial unknown at this juncture. The Companies have not yet made a decision about the method or timing of customer notifications of disconnection.¹⁸ Also still-to-be-determined is whether households enrolled in the Medical Alert Program because a member uses a physician-prescribed ventilator, respirator or ventricular device will receive an in-person visit before power is shut-off.¹⁹ And as per the Companies’ responses to ACM’s data requests, a number of other key questions remain unanswerable until the “design phases” of the AMS project have been completed. These include how disconnect orders will be executed;²⁰ how

¹⁵ *Id.* at 1:23:30 – 1:23:42; Response of Louisville Gas and Electric Company and Kentucky Utilities Company to Association of Community Ministries, Inc.’s First Request for Information, No. 40(a) (“ACM 1-40(a)”).

¹⁶ Malloy Hearing Testimony at 1:23:30 – 1:23:42.

¹⁷ Lovekamp Hearing Testimony at 3:40:40 – 3:40:54.

¹⁸ Response to ACM 1-40(a).

¹⁹ Malloy Hearing Testimony at 1:26:49 – 1:27:36.

²⁰ Response of Louisville Gas and Electric Company and Kentucky Utilities Company to Association of Community Ministries, Inc.’s First Request for Information, No. 38(a) (“ACM 1-38(a)”).

payment and/or third-party pledge information will be transferred to the AMS system;²¹ how instructions to cancel a disconnection order will be transferred to the AMS system;²² how customer service representatives wishing to stop a disconnection will be able to so communicate to the AMS system;²³ and the temporary procedures the Companies will use during the transition to automatic disconnections to make sure that systems are working properly and in accordance with their disconnection/reconnection policies.²⁴ With so much unknown, it is simply not possible to evaluate whether the Companies will have in place effective methods for implementing their assurances that current disconnection policies and protections will be retained,²⁵ or whether additional policies and protections would be warranted.

B. Disconnection of Energy Insecure Low Income Customers for Nonpayment Is a Traditional Area of Commission Concern.

Disconnection for nonpayment is a traditional area of Commission concern. The Commission has used its statutory authority to carefully craft detailed regulations restricting a utility's ability to disconnect service by mandating procedural safeguards,²⁶ requiring utilities to offer partial payment plans,²⁷ providing for 30-day medical

²¹ Response to ACM 1-38(b).

²² Response to ACM 1-38(c).

²³ Response to ACM 1- 38(d).

²⁴ Response of Louisville Gas and Electric Company and Kentucky Utilities Company to Association of Community Ministries, Inc.'s First Request for Information, No. 42.

²⁵ See, e.g., Rebuttal Testimony of John P. Malloy at 53.

²⁶ 807 KAR 5:006 Section 15(1)(f), (2).

²⁷ 807 KAR 5:006 Section 14(2).

extensions,²⁸ and allowing eligible low income customers to obtain a 30-day extension during the winter months.²⁹ Approval of the requested CPCNs at this juncture, in contrast, stands to in effect authorize a new automatic disconnection system fraught with risk for the most vulnerable ratepayers, before the information necessary to assess its potential impact, identify potential harmful consequences or fashion appropriate safeguards is available. Consistent with its traditional role in regulating disconnections, the Commission should avoid this result by imposing the modest conditions ACM seeks.

To their credit, the Companies have recognized on the record that the transition to automatic disconnection for nonpayment must be approached with caution.³⁰ Their witnesses have also suggested that the Companies will likely “slow-play” its rollout, and have avowed their intention to meet with their Low Income Advisory group to inform members of its plans after the design phase is completed, answer questions and obtain feedback before the rollout.³¹ ACM appreciates these voluntary gestures. But they cannot substitute for the modest Commission involvement ACM seeks. The technology is too new and too powerful, the numbers of customers served by the utilities too large, the unknowns too many, and the potential consequences too serious.

II. The Commission Should Require LG&E to Amend its Terms of Service Prior to Implementing Remote Disconnection for Nonpayment to Provide Additional, Enhanced Notice.

As described above, many questions about automatic remote disconnection are unanswered. No matter how these questions are ultimately answered, the change to this

²⁸ 807 KAR 5:006 Section 15(2)(c).

²⁹ 807 KAR 5:006 Section 15(3).

³⁰ See Malloy Hearing Testimony at 1:10:10 – 1:10:42.

³¹ *Id.* at 1:11:45 – 1:11:54, 1:13:35 – 1:13:50; Response to ACM 1- 40(a).

new technology requires additional customer protections in the form of enhanced notice. Towards this end, ACM recommends that, at a minimum, LG&E's process for giving notice of disconnections for nonpayment be enhanced so as to require LG&E to:

- (i) provide at least one automated voice mail message to all customers for whom LG&E has a phone number of the date and time of the impending disconnection,
- (ii) offer customers the option of receiving additional notice of disconnection by email, text or voicemail, and
- (iii) offer customers the option of adding notice to an authorized third party (such as a relative or caregiver).

After the automatic disconnection system is designed, other ways to enhance the notice process may be possible and LG&E should be encouraged to use whatever technology is available to assist customers facing disconnections in this regard.

A. Enhanced Notice Will Mitigate Some of the Harm That May Result From the Loss of Service Technicians and the Potential Speed of Automatic Disconnection.

Enhanced notice will be particularly important for low income customers, who, having difficulty affording their current utility bills, are unlikely to be able to afford the proposed opt out fees for those who do not want to face remote disconnection. Under the new system, they will lose the actual notice that disconnection is imminent by the appearance of service technicians arriving at the premises to carry out the disconnection. Equally if not more importantly, customers will lose an important communication channel to LG&E to help them avoid disconnection before it is too late by informing the service technician of circumstances that might prevent the disconnection, such as recent

payments or pledges or upcoming appointments with assistance agencies. Customers have the right to dispute the reasons for termination of service,³² and service technicians have the discretion to check an account for payment.³³ They may also forestall disconnection in appropriate circumstances. For example, information provided in response to an ACM data request described an instance in which a service technician assigned to carry out a disconnection gave a customer additional time to make a payment.³⁴ Requiring LG&E to provide at least one automated voice mail to customers of the date and time of the impending disconnection, as well as the other optional notifications ACM recommends would at least in part compensate for loss of the safeguards service technicians now provide.

Furthermore, as described above, automatic remote disconnections have the capacity to be faster than the current process, to be more concentrated and to overwhelm assistance agencies. These capabilities and the potential to cause more disconnections underscore the importance of customers receiving enhanced notice of disconnection, so they may take steps to avoid the disconnection, or prepare for being without power.³⁵ The three components of enhanced notice ACM seeks will help ensure that customers actually receive this critical information, and signal to customers that there is a new system for disconnections.

³² 807 KAR 5:006 Section 14(5)(a).

³³ Response of Louisville Gas and Electric Company and Kentucky Utilities Company to Association of Community Ministries, Inc.'s First Request for Information, 27(e).

³⁴ Attachment to Response of Louisville Gas and Electric Company and Kentucky Utilities Company to Association of Community Ministries, Inc.'s First Request for Information No. 34(d), item dated 2/15/2018.

³⁵ Ashabraner Testimony at 13.

B. The Enhanced Notice ACM Proposes Is Reasonable Under the Circumstances and Will Further the Purposes of Commission Regulations.

The enhanced notice ACM proposes is reasonable and should pose no problem for LG&E to implement. The Companies are already planning for disconnection orders generated under the new system to include a scheduled date for completion.³⁶ And although they have not yet made any decisions, the Companies are already considering additional notifications of disconnection.³⁷ While neither of the two options under consideration alone would satisfy ACM's concerns, they suggest that the Companies have the technology and experience to implement ACM's proposal.

One option the Companies are considering is an automated phone message to all customers using the telephone number on file and a pre-set time, referred to as the "Notify All" method.³⁸ The Companies have experience with this method, as they previously sent an automated phone call to customers three days prior to the scheduled disconnect for nonpayment date.³⁹ The Companies are also considering an "Opt In" method, which would require customers to register to receive notification and would allow them to determine the channel and timing.⁴⁰ Unlike the "Notify All" method, however, "Opt In" would also allow customers to designate other persons, such as relatives or caregivers, to receive notifications.⁴¹

³⁶ Response of Louisville Gas and Electric Company and Kentucky Utilities Company to Association of Community Ministries, Inc.'s First Request for Information No. 35.

³⁷ Response to ACM 1- 40.

³⁸ *Id.*

³⁹ Response of Louisville Gas and Electric Company and Kentucky Utilities Company to Association of Community Ministries, Inc.'s Second Request for Information, No. 3 ("ACM 2-3").

⁴⁰ Response to ACM 1- 40.

⁴¹ *Id.*; Response to ACM 2-3.

ACM's proposal in essence simply calls for LG&E to provide the two options the Companies are already considering, rather than choosing only one alternative. Access to each of the methods of enhanced notice ACM has suggested – i.e. initial phone call with the options to receive additional notice of disconnection by email, text or voicemail and to add notice to a third party -- will better protect low income and vulnerable customers without unduly burdening LG&E, and so should be required.

Ensuring that customers receive appropriate notice of disconnection is an important part of the customer protections guaranteed by Commission regulations. Regulations provide opportunities to avoid or delay disconnections through payment, agency pledges, partial payment plans, medical certificates and certificates of need in winter. Such opportunities, however, must be exercised before disconnection takes place, or they are lost.⁴² Notice that is sufficiently precise, appropriate to the disconnection methods and technology in use and actually received is thus key to safeguarding the consumer protections Commission regulation has created. In light of the changes that remote disconnections will bring and the consequences for low income customers, the Commission should therefore require the Companies to implement ACM's recommendations for enhanced notice.

III. Conditioning a CPCN Upon the Terms ACM Seeks Is Well Within the Commission's Authority.

Just as are the aforementioned restrictions on service disconnection promulgated by the Commission, taking account of potential harm to energy insecure ratepayers in an age of AMS is an integral part of the Commission's regulatory responsibility. The Commission has plenary authority, derived from KRS 278.030 and KRS 278.040, to

⁴² 807 KAR 5:006 Section 15(2) and (3).

regulate and investigate utilities and to act to ensure that rates are fair, just and reasonable.⁴³ “Rates” include not only a charge for service rendered or to be rendered by a utility, but also “any rule, regulation, practice, act, requirement, or privilege in any way relating to such...charge...”⁴⁴ The “service” over which the Commission has exclusive jurisdiction includes “any practice or requirement in any way relating to the service of any utility...”⁴⁵ And while KRS 278.030(2) permits a utility to “establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service,” KRS 278.040(1) requires the Commission to enforce the statutory dictate that these rules be “reasonable.”⁴⁶

Using AMS to remotely disconnect customers for nonpayment – via systems and protocols not yet detailed or designed -- will necessarily entail some combination of utility “rule,” “regulation,” “practice,” “act,” and/or requirement as set forth in these statutes. Disconnection of service for nonpayment by its very nature is related to utility charges and service. Putting in place conditions to ensure that the remote disconnection system and protocols still under development will be fair, just and reasonable as implemented thus falls squarely within the Commission’s statutory authority and core responsibility under Chapter 278.

That this is a CPCN case makes no difference. K.R.S. 278.020 affords the Commission the latitude to issue the certificate, to refuse to issue it, or to issue it in part

⁴³ *Ky. Public Service Commission v. Conway*, 324 S.W.3d 373, 380, 383 (Ky. 2010).

⁴⁴ KRS 278.010(12).

⁴⁵ KRS 278.010(13).

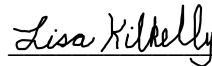
⁴⁶ See KRS 278.040(2).

and refuse it in part.⁴⁷ Consistent with this discretion, the Commission may issue a CPCN subject to conditions when appropriate.⁴⁸

CONCLUSION

The advent of automatic remote disconnection stands to place greater numbers of energy insecure low income ratepayers at risk of losing utility service. Should the Commission issue the requested CPCNs, it should therefore simultaneously exercise its statutory authority to see that the Companies plan for and implement this new technological capability with great care so as to avoid needless disconnections. The modest, narrowly-tailored conditions ACM proposes are reasonable under the circumstances, will enable the Commission to do just that and should be attached to any CPCN issued.

Respectfully submitted,



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⁴⁷ KRS 278.020(1)(b).

⁴⁸ See, e.g., *In the Matter of The Application of Kentucky Power Company for a Certificate of Public Convenience and Necessity To Construct a 138 KV Transmission Line In Floyd County, Kentucky, No. 2007-00155* (Order August 3, 2007).