

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|                               |   |            |
|-------------------------------|---|------------|
| GERALD E. BRIFFA              | ) |            |
|                               | ) |            |
| COMPLAINANT                   | ) |            |
|                               | ) |            |
| V.                            | ) | CASE NO.   |
|                               | ) | 2008-00488 |
| BLUE GRASS ENERGY COOPERATIVE | ) |            |
| CORPORATION, INC.             | ) |            |
|                               | ) |            |
| DEFENDANT                     | ) |            |

O R D E R

This action was initiated by a formal Complaint filed by Gerald E. Briffa on October 8, 2008<sup>1</sup> against Defendant, Blue Grass Energy Cooperative Corporation, Inc. (“Blue Grass Energy”). In his Complaint, Mr. Briffa claims that Blue Grass Energy overcharged him for electric service from June 4, 2004 to the present due to its failure to “properly install, maintain and/or read [his] electric meter” at his Lexington, Kentucky residence. The Complaint also claims that Blue Grass Energy has failed to provide Mr. Briffa “usage and weather records” from June 4, 2004 to the present, despite his

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<sup>1</sup> The Commission did not institute this action immediately upon the filing of the October 8, 2008 Complaint because, at that time, the Commission’s Division of Consumer Services was continuing to work with Mr. Briffa in an effort to help him resolve the Complaint with Blue Grass Energy through its informal complaint process. Those efforts were not successful, and the Commission issued an Order to Blue Grass Energy on December 8, 2008 to answer or satisfy the Complaint.

requests to the utility, and that the “correlation between temperature, usage and [electricity] charges” at his residence for that time period is not “adequate.”

Defendant, Blue Grass Energy, filed its Answer to the complaint on December 18, 2008. In its Answer, Blue Grass Energy denies all of Complainant’s allegations and moves the Commission to dismiss the complaint with prejudice. In its defense, Blue Grass Energy states that it has provided three different electric meters for the Complainant’s residence, each of which was tested by a meter technician certified by the Commission, and shown to be within the acceptable range of accuracy.<sup>2</sup>

With its Answer, Blue Grass Energy included copies of test results for each of the three meters<sup>3</sup> showing that they tested within the two percent margin of error allowed under 807 KAR 5:041, Section 16(5):

Whenever a meter is found to be more than two (2) percent fast or slow, refunds or back billing shall be made for the period during which the meter error is known to have existed or if not known for one-half (1/2) the elapsed time since the last test but in no case to exceed three (3) years. This provision shall apply only when sample testing of single phase meters has been approved by the commission and utilized by the utility.

Blue Grass also states that, in response to an informal complaint Mr. Briffa filed with the Commission earlier in 2008, it hired an energy consultant who performed an energy audit of the Briffa residence on May 8, 2008. The results of that audit were included as Exhibit B to Blue Grass Energy’s Answer. The audit identified a number of issues adversely impacting the energy efficiency of the house.

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<sup>2</sup> Answer of Blue Grass Energy at 2-3.

<sup>3</sup> Answer of Blue Grass Energy, Exhibits A1, A2, and A3.

In response to Complainant's claim that it had failed to provide usage and weather records for the period between June 4, 2004 and the present, Blue Grass Energy declined to provide weather records for the entire period, asserting that to do so would be overly burdensome. Instead, Blue Grass Energy provided all usage records from Complainant's residence from June 8, 2004 to the present and weather data from January 2008 to April 2008.<sup>4</sup>

On February 6, 2009, Complainant filed a Response to Blue Grass Energy's Motion to Dismiss wherein he restated his claim that there is an inadequate correlation between the outside temperature, his electricity usage, and "price."<sup>5</sup> Complainant also claimed that a gentleman named Joe Burgess tested his house and found it to be "slightly short of the highest energy efficiency rating available."<sup>6</sup>

In its February 23, 2009 data request to Complainant, Commission Staff asked whether, in referring to a test of his house performed by Mr. Burgess, Mr. Briffa was referring to the May 8, 2008 energy audit, attached as Exhibit B to Blue Grass Energy's Answer. In his response, Complainant verified that he was referring to the May 8, 2008 energy audit and referenced the third paragraph of the audit report as follows:

Mr. Burgess states: "A blower door test revealed . . . This falls into the category of a standard new home . . . ." *All standard homes must be energy efficient.* Mr. Burgess explained that mine was it [sic] just wasn't at the top of the efficiency chart.

(Emphasis added.)

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<sup>4</sup> Id. at Exhibit D.

<sup>5</sup> Complainant's Response to Blue Grass Energy's Motion to Dismiss at 1.

<sup>6</sup> Id. at 2.

Complainant provides no support for his statement that “[a]ll standard homes must be energy efficient,” nor does he explain the discrepancy between the plain meaning of Mr. Burgess’s statements and his proffered interpretation. The language from which Complainant quotes states, in pertinent part (without ellipses):

A blower door test revealed 4450 cfm leakage, which translates into a 45% natural air change per hour (ACHn). This falls into the category of a standard new home, but shy of the 26% to 40% ACHn needed to be considered an energy efficient home.

It is clear from the report that Complainant’s house did not fall into the category of an energy-efficient home due to several areas of air leakage throughout the dwelling, many of which were due to an absence of adequate insulation. Complainant states that he has now implemented many, but not all, of the suggested improvements included in the May 8, 2008 audit report. However, he does not present any evidence in support of his claims; nor does he present any evidence of having conducted a new energy audit to show whether implementing those improvements has significantly improved the dwelling’s efficiency.

Regardless of whether the Briffa residence is deemed to be energy-efficient or not, the burden is upon the Complainant to provide proof to the Commission to support the claims in his Complaint. Although Complainant claims that Blue Grass Energy has failed to “properly install, maintain and/or read [his] electric meter,” he has presented no evidence to show that any of the three meters that have been installed at his residence were malfunctioning or improperly calibrated or that Blue Grass Energy incorrectly read his meter. However, Blue Grass Energy has presented evidence in its defense showing

that all three meters were tested and shown to be in compliance with the two percent margin of error allowed under 807 KAR 5:041, Section 16(5).<sup>7</sup>

Blue Grass Energy points out in its February 17, 2009 Reply to Response of Complainant that Mr. Briffa has failed to explain or demonstrate how the ambient temperature and his electricity usage are inadequately correlated.<sup>8</sup> In fact, Complainant has not shown any tangible example of such “non-correlation” in any of the documents he has filed in this proceeding. If there is some statistical method by which Complainant is comparing weather data and electricity usage data, he has not presented evidence thereof to the Commission. Even so, whether Complainant’s electricity usage correlates “properly” with the weather data for a particular day is irrelevant to whether or not Blue Grass Energy properly billed him for his electrical usage. Pursuant to KRS 278.160, Blue Grass Energy is required to charge its customers for their metered electricity usage in accordance with the tariff schedules it has filed with the Commission:

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 or less than that prescribed in such schedules.<sup>9</sup>

Having failed to demonstrate that any of the three meters Blue Grass Energy has placed at his residence were malfunctioning or that Blue Grass Energy either misread the meters or charged rates not set forth in its tariffs, Mr. Briffa has failed to carry his burden of proof, and his claims must, therefore, be dismissed.

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<sup>7</sup> Answer of Blue Grass Energy, Exhibits A1, A2, and A3.

<sup>8</sup> Reply to Response of Complainant at 1.

<sup>9</sup> KRS 278.160(2).

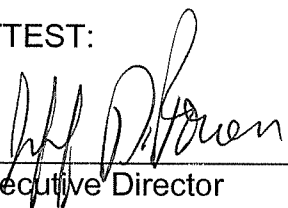
As to the weather data that Complainant claims is in the exclusive control of the utility, Blue Grass Energy correctly points out that it is not required (by statute, regulation, or its tariff) to provide such information to him and that such weather data is readily available from other sources. In fact, there are a number of online resources for such weather data, either for free or for a small fee.<sup>10</sup> Therefore, the Commission declines to order Blue Grass Energy to provide Complainant any further weather records.

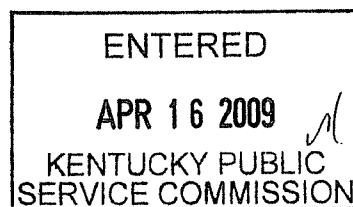
The Commission finds that Complainant, Gerald Briffa, has not presented any evidence to support his claims against Defendant, Blue Grass Energy, as stated in his October 8, 2008 Complaint. The Commission also finds that, pursuant to KRS 278.260(2), a hearing is not necessary in this matter. Finally, the Commission finds that Blue Grass Energy's actions were reasonable in its attempts to resolve Mr. Briffa's complaints regarding his electric bill.

IT IS THEREFORE ORDERED that the Complaint filed by Gerald E. Briffa on October 8, 2008 is hereby dismissed with prejudice.

By the Commission

ATTEST:

  
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Executive Director



<sup>10</sup> For example, the online version of "The Old Farmer's Almanac" provides a free weather history search tool for any location in the United States, for any date from January 1, 1946 to the present. See: <http://www.almanac.com/>. (Last visited on March 30, 2009).

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