

LaHoma Paige, 2626 East 28th Street, Kansas City, Missouri 64128, Complainant, v. Kansas City Power & Light Company, 1330 Baltimore Avenue, Kansas City, Missouri 64105, Respondent.

Case No. EC-84-274

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

1985 Mo. PSC LEXIS 46; 27 Mo. P.S.C. (N.S.) 363

May 15, 1985

APPEARANCES: *John W. Kurtz*, Attorney at Law, 1300 Commerce Bank Building, Kansas City, Missouri 64108, for LaHoma Paige.

Pat A. Shannon, Attorney, Kansas City Power & Light Company, 1330 Baltimore Avenue, Kansas City, Missouri 64105, for Kansas City Power & Light Company.

Linda K. Malinowski and *Paul H. Gardner*, Assistants General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

PANEL: Steinmeier, Chm., Musgrave, Mueller, Hendren, Fischer, CC.

OPINION: REPORT AND ORDER

[364]** On June 27, 1984, LaHoma Paige **[*2]** (hereinafter, Complainant) filed a formal complaint against Kansas City Power & Light Company (hereinafter, KCPL or Company) alleging that KCPL had improperly billed Complainant from 1950 through 1983. KCPL was notified of the complaint and filed its answer on August 3, 1984. The matter was set for hearing and heard November 7, 1984.

The parties waived the reading of the transcript and filed briefs in accordance with a briefing schedule.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

Complainant resides at 2626 East 28th Street, Kansas City, Missouri. She resided at that address with her husband, who is now deceased, and her eight children since approximately April of 1950. Complainant's husband Satchell originally applied for and obtained service from KCPL at that address in 1950. Complainant has regularly been billed by the Company since that time. Complainant has consistently been late in paying her bills to KCPL due to her inability to pay the amount owing. On numerous occasions, the electric service to her residence was shut off due **[*3]** to this inability to pay.

Complainant contends her home has at all times since 1950 been used only as a residence. Guests have stayed at Complainant's home but none have lived there, and at no time have they ever paid to stay. No business has ever been run from the residence. In July of 1983, Complainant complained to her daughter about her expensive electric bill. Complainant's daughter expressed that concern to KCPL while paying Complainant's bill. A Company representative then explained the bill was high because it reflected the commercial rate and not the rate of a residential customer. On the bill was a section entitled "Rate Code". The code enumerated was "1GS1D". That is a code designating commercial service. Complainant's rate was subsequently changed to a residential rate, which was designated "1RS1A". The Complainant contends she was unjustly, unreasonably and prejudicially treated by the Company charging her the commercial rate when the residential rate was the only one for which she was eligible.

[**365] KCPL admits that Complainant has been charged a commercial rate from 1969 to 1983. KCPL is unable to accurately determine what rate Complainant was charged [*4] between 1950 and 1969 due to a lack of Company records prior to 1969. The exception to this is found in Exhibits 33A and B, which purport to be deposit records from the 1950s. The objections to the receipt of those exhibits are hereby overruled and Exhibits 33A and B are received. The Commission deems the deposit records to be business records and any question as to the witness's competency in testifying about them goes to the weight of the evidence.

Exhibits 33A and B demonstrate that an initial deposit of \$10.00 was made by Complainant's husband at the time of connection and additional deposits were made in subsequent years. The KCPL representative stated that \$10.00 was the amount due on deposit for a residential account and that further deposits were not required on residential accounts. KCPL maintains that the initial \$10.00 deposit was to obtain residential service. KCPL infers from the additional deposits that at some time during 1953, or thereafter, the account was changed to a commercial account.

Several of the Company's tariffs were received into evidence as Exhibits 32A through E. Each of those tariffs became effective in either 1978 or 1981. Several of those [*5] provisions pertained to the customer's responsibilities. Pertinent portions of those tariffs are set forth as follows:

2.01 APPLICATION FOR SERVICE: A customer applying for electric service shall, if requested by the Company, furnish sufficient information on the size and characteristics of the load and the location of the premises to be served and such additional information as to enable the Company to designate the class or classes of electric service it will supply to the Customer and the conditions under which they will be supplied.

4.03 CUSTOMER RESPONSIBILITY: The Customer shall be responsible for determining in advance, through application to the Company, the class or classes of electric service which will be designated by the Company and made available to the Customer and the applicable conditions of such electric service.

7.02 CHOICE BY CUSTOMER: If a Customer is eligible to take electric service from the Company under any one of two or more applicable rate schedules available for the class of electric service to be supplied by the Company, the choice of such rate schedule shall lie with the Customer.

7.04 CHANGE OF RATE SCHEDULES: After a Customer has selected an applicable [*6] rate schedule under which he elects to take electric service from the Company, he will not have the right to change his selection of his applicable rate schedule available for that class of electric service for a period of one year.

KCPL representatives interpret those tariff provisions as placing full responsibility on the customer: to give the Company adequate information to allow the Company to designate the appropriate class of service; to notify the Company if there is a change of circumstances requiring a different service classification; and to verify the rates by notifying the Company in the event the customer has been, through whomever's fault, placed on an inappropriate rate.

[366]** KCPL's basis for this interpretation is that it is not practical nor economical to require field investigations for every connection. The Company has no ability to police its customer connections and class of service designations and must rely on the customer. At the time of hearing, field investigations were routinely performed when a commercial account was to be made residential.

It is the Company's position that prior to the 1983 notification given by Complainant, Complainant was appropriately **[*7]** billed the commercial rate. In spite of this contention, Complainant was offered a one-year billing adjustment. Through its interpretation of rule 7.04, the Company sometimes offers a billing adjustment for a one-year period if the requested change in rate classification would benefit the customer. That adjustment is not considered an admission of error by the Company.

KCPL's witness Giles testified that it has always been the Company's position to correct errors in billing for as long as that error existed. However, the Company does not believe a billing error was committed in this instance. The Company further maintains that many residences are converted to apartments and are placed on commercial rates; therefore, the Company must rely solely on the customer's information. The Company further contends that even if such a determination of error were made, the statute of limitations bars a substantial portion, if not all, of Complainant's claims.

Staff did not take a position on the matter at the hearing. Its position was set forth in its brief. Staff essentially agrees with Complainant that she was improperly assessed the commercial rate and overcharged for the entire 33-year **[*8]** period between 1950 and 1983. Staff believes that Complainant has met her burden of proving that she was entitled to the residential rate; therefore, the burden of proof should shift to the Company.

The Commission finds the evidence to demonstrate that the Complainant's home was used solely for residential purposes from April 1950 to July 1983. Complainant was, therefore, eligible for the residential electric rate during that period. KCPL attempted to rebut that evidence by asking Complainant whether she would be "surprised" to discover several people had listed Complainant's telephone number as their own in various city directories. Complainant was quite "surprised". Complainant stated several of those alleged boarders had indeed stayed at her home as house guests, but never for longer than a week or so. No one ever paid to stay at Complainant's home. The directories were not produced nor introduced into evidence. However, the Commission finds production of the directories would have made little difference in light of Exhibit 27, the tariff applicable at the time of Complainant's original connection, which provides that standard residential service is "[a]vailable for single **[*9]** private dwelling units using single phase service for lighting, refrigeration, cooking and household appliances, also residences converted to rooming houses or used for light housekeeping purposes."

KCPL asks the Commission to infer, from the additional deposits of \$55.00 on Exhibits 33A and B, that Complainant was originally charged a **[**367]** residential rate and subsequently changed to a commercial rate through transactions with Complainant's husband. The Commission

does not find this argument persuasive. It was never established that deposits of \$10.00 were only for residential service. The Commission has no way of knowing what was charged for a commercial deposit in 1950. The Company witness, Davidson, was only able to speculate as to the events surrounding the deposit. The witness did not work at KCPL in the 1950s or 1960s and had never been exposed to or filled out that particular type of deposit record. Although the Company witness testified that a \$10.00 deposit was required for residential service and no further deposits were required for residential service, he further admitted that he had not referred to the 1950 regulations and could not state when a deposit may [*10] or may not have actually been required of a person applying for service. The exhibits do not, on their face, remedy the uncertainty.

The Company's position is that tariff provisions 7.02 and 7.04 allow a customer who is eligible for more than one rate to choose the rate she wishes to be placed on. The evidence established that generally a customer is either eligible for commercial or residential rates. The choice would normally be one of two commercial or one of two residential rates. Hence, those provisions would be inapplicable to the instant situation.

The Commission agrees with KCPL and Staff's witness Washburn that the tariffs must be read together as a whole. The Commission finds that the rules and regulations set forth previously from Exhibits 32A through E were not in existence in 1950 in their present form. Nonetheless, the Commission finds it is reasonable to assume that the customer requesting service in 1950 was responsible for providing information which was sufficient to aid the Company in making its rate classification determination.

In this case, the Commission has no evidence concerning the information given KCPL by Complainant's husband. The Commission [*11] cannot determine when KCPL actually began charging Complainant the commercial rate. The Commission does find that Complainant was charged the commercial rate from 1969 to 1983. The Commission further finds that the commercial rate was higher during that period than the correlating residential rate and Complainant was, therefore, overcharged.

The Commission finds that the Company's interpretation of its tariff provisions pertaining to customer responsibility is unreasonable. The Company maintains that the customer is in the best position to know when the rate she is being charged is not the correct one. The Commission recognizes that the customer is in the best position to know her present circumstances; however, the Commission does not believe it is reasonable to expect a customer to be able to determine if she is being billed on the appropriate rate when the bill simply designates the rate code as an unintelligible grouping of numbers and letters. The fact that the bill states a number to call for rate information does not alleviate the problem that Complainant is in no way put on notice that such rate clarification or information should be sought.

[**368] The customer should [*12] not "be required to employ experts to verify the correctness of the rates charged. . . ." *De Paul Hospital School of Nursing, Inc. v. Southwestern Bell Telephone Company*, 539 S.W.2d 542, 547 (Mo. App. 1976). In the instant case, KCPL's own witness Davidson testified that when he was employed as a meter reader, he was unable to determine the meaning of the rate code classifications. The Commission finds it untenable to expect the average customer to be able to decipher the meaning of the rate code without some type of legend or description on the bill.

Numerous references were made concerning the Company's billing inserts, or lack thereof, pertaining to educating the public as to their appropriate rate. It was established that many of the inserts go unread. This bolsters the Commission's finding that an adequate rate description should appear upon the bill. The Commission notes the Company's current bill alleviates this problem by placing a description next to the enumerated rate code.

The objections to Exhibits 13 and 16 are hereby sustained.

Conclusions

The Missouri Public Service Commission has arrived at the following conclusions.

The Commission has jurisdiction over [*13] the matters alleged in this complaint pursuant to *Sections 386.390 and 393.140, R.S.Mo. 1978*. Herein, Complainant alleges she has been inappropriately charged the commercial, rather than the residential rate, for electric service from April 1950 to July 1983. The Commission has found that Complainant was eligible for the residential rate during that entire period of time. The Commission has further found Complainant was charged the commercial rate for electric service from 1969 to 1983. KCPL has alleged it is the customer's responsibility to verify the rates charged by notifying the Company in the event of an inappropriate rate designation. KCPL maintains the customer is in the best position to determine when a mistake has occurred.

The Commission concludes from the findings herein that KCPL's interpretation of its tariff provisions pertaining to customer responsibility was unreasonable prior to the billing modification in 1984. The Commission concludes that as a result of that unreasonable interpretation, Complainant was overcharged for electric service from 1969 through July 1983. The Commission further concludes that KCPL has violated its tariffs by charging the commercial [*14] rather than the residential rate.

The Commission specifically requested the parties to brief any possible statute of limitations issue. This request was made as a result of the Company's raising of the issue. After careful review, the Commission believes it is unnecessary to make a determination regarding the appropriate statute of limitations.

The Commission is aware it cannot order any monetary or pecuniary award, refund or reparation. *B.G. DeMaranville v. Fee Fee Trunk Sewer, Inc., 573 S.W.2d 674 (Mo. App. 1978)*. Therefore, the Commission believes a determination of any applicable statute of limitations, in the instant case, falls within the province of the court system and need not be determined herein. [**369] Since the Commission cannot assess any type of damages, the Commission finds it inappropriate to require KCPL to produce a service record or calculation of overcharges.

It is, therefore,

ORDERED: 1. That Kansas City Power & Light Company overcharged LaHoma Paige by charging the commercial rate rather than the residential rate for electric service supplied to her residence at 2626 East 28th Street, Kansas City, Missouri, from 1969 to July of 1983.

*ORDERED: [*15] 2.* That Complainant is hereby authorized to seek recovery of said overcharges in the circuit court.

ORDERED: 3. That this report and order shall become effective on the 14th day of June, 1985.

Steinmeier, Chm., Musgrave, Mueller, Hendren and Fischer, CC., Concur.