

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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|------------------------------|---|------------|
| FRANK MCANINCH |) | |
| |) | |
| COMPLAINANT |) | |
| |) | CASE NO. |
| V. |) | 2013-00165 |
| |) | |
| TAYLOR COUNTY RURAL ELECTRIC |) | |
| COOPERATIVE CORPORATION |) | |
| |) | |
| DEFENDANT |) | |

ORDER

On April 29, 2013, Complainant, Frank McAninch ("Complainant"), filed a formal complaint against Defendant, Taylor County Rural Electric Cooperative Corporation ("Taylor RECC"), asserting that Taylor RECC has impermissibly attempted to assess an improper charge for the installation of infrastructure necessary to provide electric service at 3202 Poplar Hill Road, Liberty, KY 42539. On May 15, 2013, Taylor RECC filed a response wherein it denied Complainant's allegations and contended that Complainant should not be permitted to proceed *pro se* due to its belief that the subject property, to which service was requested, is owned by the McAninch M F & Vivien Trust ("McAninch Trust"). On July 3, 2013, Commission Staff propounded requests for information to both parties. On July 12, 2013, the Commission received Complainant's response to Staff's requests as well as an additional document directed to Taylor RECC styled "Complainant Supplemental Request for Information."

On July 26, 2013, Taylor RECC petitioned the Commission to dismiss the Complaint on the basis that Complainant's continued participation in the case constitutes the unauthorized practice of law. Taylor RECC argues that because the subject property, to which service was requested, is owned by a trust, Complainant may not prosecute this action on his own behalf without the services of a licensed attorney.

Taylor RECC additionally moves to strike Complainant's response to Taylor RECC's First Set of Requests for Information as well as Complainant's Supplemental Request for Information. It asserts that Complainant failed to serve a copy of the documents on Taylor RECC. It further states that Complainant failed to sign and certify the documents in accordance with Commission procedural requirements. As a result it contends the documents are "legal nullities." Taylor RECC further argues that because Complainant did not submit an initial information request, his request, styled a supplemental request, is untimely.

Complainant submitted a response wherein he contends that nothing precludes a non-lawyer from filing a complaint with the Commission.

Taylor RECC countered with a motion to strike Complainant's response. It notes that while the response was signed by the Complainant, it was again not served upon Taylor RECC. It also states that the response was not timely filed.

Here, as Taylor RECC concedes, Complainant may request and initiate service on his own behalf. However, because the instant service request entails the construction and installation of approximately 700 feet of line, as well as multiple utility poles, the project necessarily requires the consent of the property owner by virtue of the need for the owner to grant the easement required prior to beginning construction.

Complainant is admittedly seeking to commence utility service on property to which he does not have a current ownership interest.¹ Complainant has yet to demonstrate that he has both a legal right to be on the property and a personal right to contract for the installation of utility services on the property. Complainant states that the property and building where the service is to be initiated are owned solely by his parents, Marshall and Vivien McAninch.² However, in the absence of any proof and due to Taylor RECC's dispute regarding ownership to the contrary, the Commission cannot ascertain whether title to 3202 Poplar Hill Road, Liberty, KY 42539 rests with Marshall and Vivien McAninch individually or with the McAninch Trust. Accordingly, the Commission finds that Complainant should be granted an opportunity to provide evidence regarding the identity of the property's legal owner as proven by a deed or other legal documentation. Complainant should also provide written documentation, bearing the signature of the property's owner, attesting to whether Complainant is authorized to work or reside on the subject property and whether Complainant is authorized to arrange for the installation of utility services on the property in question.

The Commission further finds that Taylor RECC's motion to dismiss should be held in abeyance pending receipt of the aforesaid information.

As to Taylor RECC's motions to strike, there is no evidence that Complainant's documents were served upon Taylor RECC. Complainant's data request and responses contain neither Complainant's signature nor a certificate of service. His response to Taylor RECC's motion to dismiss does not bear a certificate of service.

¹ Frank McAninch's Response to Commission Staff's Initial Request for Information at 1.

² *Id.*

Commission regulations require all pleadings and documents be signed by the submitting party and to contain proof of a certificate of service.³ Accordingly, Complainant has failed to abide by the Commission's regulations and procedural Order and his documents cannot be considered filed at this time. In accordance with Commission regulations, all papers submitted by Complainant must be signed, contain a certificate of service attesting to the documents' mailing to all parties of record and must in fact be mailed to Taylor RECC in addition to the mailing of a signed original plus six copies to the Commission. Accordingly, Complainant must send Taylor RECC a signed copy, complete with a certificate of service, of his response to Commission Staff's Initial Request for Information, response to Taylor RECC's First Data Request, Supplemental Request for Information from Taylor RECC, and Response to Taylor RECC's motion to dismiss. Complainant should also mail one signed and certified copy of the aforesaid documents to the Commission.

Taylor RECC also asserts that because Complainant did not submit an initial request for information, his supplemental request for information should be stricken.

The Commission has previously held:

The purpose of obtaining information by data requests is to make available to all parties and the Commission the facts necessary to determine if the rates proposed . . . are fair, just, and reasonable. All relevant information should be made available to all parties. We consider the term "supplemental" to be a term of art rather than one of mandatory procedure.⁴

Therefore, that Complainant termed his information request a *supplemental* request,

³ 807 KAR 5:001 Section 4(3)(a), Section 6.

⁴ Case No. 2003-00284, *The Application of Mallard Point Disposal Systems, Inc. for a Rate Adjustment Pursuant to the Alternative Rate Filing Procedure for Small Utilities* (PSC Ky. Nov. 3, 2003).

without having first submitted an *initial* data request is not fatal to the request. However, for the reasons previously iterated, Complainant's request for information shall not be considered filed until Complainant fully complies with Commission regulations pertaining to the signing of papers and service.

Finally, to afford Complainant an opportunity to provide the information ordered herein, the Commission finds that the procedural schedule in this matter should be suspended until further Order.

IT IS THEREFORE ORDERED THAT:

1. Frank McAninch shall submit one copy to Taylor RECC and refile with the Commission one copy of his response to Commission Staff's Initial Request for Information, response to Taylor RECC's First Data Request, Supplemental Request for Information from Taylor RECC, and Response to Taylor RECC's motion to dismiss within 30 days of the date of this Order. Papers shall be signed, verified by oath and served upon all parties of record in accordance with 807 KAR 5:001, Section 4. Until such papers are resubmitted, they shall not be considered filed. All future documents filed with the Commission must also be signed, contain a certificate of service and served on all parties.

2. The motion of Defendant Taylor RECC to dismiss is hereby held in abeyance for a period of 30 days from the date of this Order.

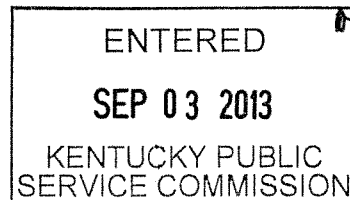
3. The motions of Defendant Taylor RECC to strike are hereby held in abeyance for a period of 30 days from the date of this Order.

4. The procedural schedule within the Commission's June 17, 2013 Order is hereby suspended.

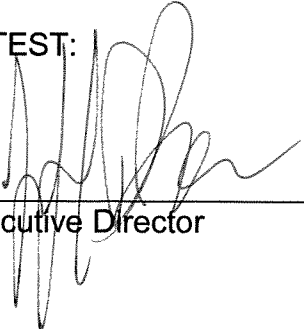
5. Frank McAninch shall provide verified written documentation, within 30 days from the date of this Order, attesting to the legal owner of 3202 Poplar Hill Road, Liberty KY 42539.

6. Frank McAninch shall provide verified written documentation, within 30 days from the date of this Order, attesting to whether he has the right to occupy 3202 Poplar Hill Road, Liberty KY 42539 and whether the property's legal owners will grant an easement to install utility services.

By the Commission



ATTEST:



Executive Director

Case No. 2013-00165

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