

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BULLDOG'S ENTERPRISES, INC. D/B/A	)	
BULLDOG'S ROAD HOUSE	)	
	)	
COMPLAINANT	)	CASE NO.
V.	)	2010-00404
	)	
DUKE ENERGY KENTUCKY, INC.	)	
	)	
RESPONDENT	)	

O R D E R

On October 15, 2010, Complainant, Bulldog's Enterprises, Inc. d/b/a Bulldog's Roadhouse, filed a complaint against Respondent, Duke Energy Kentucky, Inc., for improper billing. The complaint alleges the following causes of action: 1) fraud; 2) breach of contract; 3) breach of good faith and fair dealing; 4) violation of KRS 367.170;<sup>1</sup> and 5) unjust enrichment. The complaint further seeks class certification on behalf of Respondent's commercial customers as well as compensatory and punitive damages, attorney's fees, litigation costs and expenses, and trial by jury.

Upon the filing of a formal complaint, 807 KAR 5:001, Section 12(4)(a) requires the Commission to examine and determine whether the complaint establishes a prima facie case. A complaint establishes a prima facie case when, on its face, it states

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<sup>1</sup> KRS 367.170 makes unlawful any unfair, false, misleading or deceptive business acts or practices.

sufficient allegations that, if not contradicted by other evidence, would entitle the complainant to the requested relief.<sup>2</sup>

The Commission finds that Complainant has failed to establish a prima facie case with respect to the request for class action certification as well as the claims for fraud, breach of contract, breach of good faith and fair dealing, violation of KRS 367.170, and unjust enrichment. For each of these claims, Complainant seeks compensatory and punitive damages, attorney's fees, other litigation costs and expenses, and trial by jury. The Commission, however, is without jurisdiction to award the relief requested by Complainant. Pursuant to KRS 278.040, the Commission has jurisdiction of only the "rates" and "service" of utilities as defined by KRS 278.010. Complainant's request for class certification, damages, costs, expenses, and jury trial fall under neither category.

In Carr v. Cincinnati Bell, Inc., 651 S.W.2d 126, (Ky. App.1983), a customer brought an action in Kenton Circuit Court seeking, among other things, compensatory damages for tortious breach of contract for telephone service. The circuit court dismissed the suit, holding that the Commission had exclusive jurisdiction over the matter. Reversing the circuit court's ruling, the Court of Appeals stated:

[A]ppellant seeks damages for breach of contract. Nowhere in Chapter 278 do we find a delegation of power to the PSC to adjudicate contract claims for unliquidated damages. Nor would it be reasonable to infer that the Commission is so empowered or equipped to handle such claims consistent with constitutional requirement. Kentucky Constitution Sec. 14.<sup>3</sup>

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<sup>2</sup> See, Case No. 2005-00451, *Raynanza L. Duke v. Louisville Gas and Electric Company* (Ky. PSC, Feb. 6, 2006).

<sup>3</sup> Carr at 128.

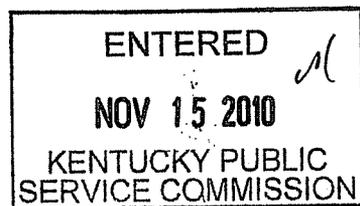
Accordingly, consideration of the requested class certification, unliquidated damages, attorney's fees, and trial by jury is beyond the Commission's jurisdiction.

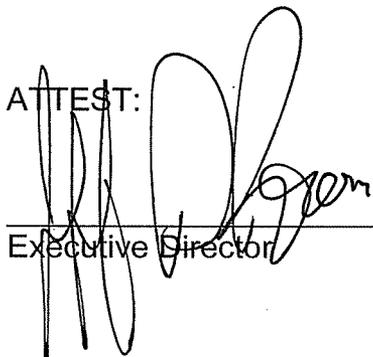
The Commission finds that the underlying claim of improper billing constitutes a prima facie case and will require Respondent to answer or satisfy this claim.

IT IS THEREFORE ORDERED that:

1. The claims for fraud, breach of contract, breach of good faith and fair dealing, violation of KRS 367.170, and unjust enrichment as well as the request for class certification, unliquidated damages, and attorney's fees are dismissed for failure to state a prima facie case.
2. Respondent shall file a written answer to the underlying claim for improper billing within 10 days of the date of service of this Order.

By the Commission



ATTEST:   
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