

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

NANCY A. STADTLANDER)	
)	CASE NO.
VS.)	2016-00187
)	
KENERGY CORP.)	

ORDER

On May 10, 2016, Nancy A. Stadtklander ("Ms. Stadtklander") tendered a formal complaint against Kenergy Corp. ("Kenergy") alleging that Kenergy violated trespassing laws when it replaced an electromechanical meter with an advanced metering infrastructure ("AMI") meter without her consent, and that the AMI meter emits continuous noise and radiation, which violate trespass, environmental, and nuisance laws and regulations. Ms. Stadtklander alleges adverse health impacts from the AMI meter cause her to have a diminished capacity to perform daily life functions. As a remedy for alleged violations, Ms. Stadtklander requests that the AMI meter be removed and her previous electromechanical meter be reinstalled. On June 24, 2016, Ms. Stadtklander filed a request to separate the instant matter into two cases: one addressing the remedy of replacing the AMI meter with the previous electromechanical meter, and a second case to address alleged noise pollution. Based upon a review of the complaint and being sufficiently advised, the Commission finds that Ms. Stadtklander fails to establish a *prima facie* case, and, pursuant to Commission regulations, should be permitted the opportunity to amend the complaint to establish a *prima facie* case

within the designated time, or the matter will be dismissed. The Commission further finds that the request to separate this matter into two separate cases fails to set forth good cause, and should be denied.

DISCUSSION

The procedures for formal complaints filed with the Commission are set forth in 807 KAR 5:001, Section 20. Pursuant to those regulations, a complaint must set forth a *prima facie* case. To establish a *prima facie* case under 807 KAR 5:001, Section 20(1)(c), the complaint must state:

Fully, clearly, and with reasonable certainty, the act or omission, of which complaint is made, with a reference, if practicable, to the law, order, or administrative regulation, of which a failure to comply is alleged, and other matters, or facts, if any, as necessary to acquaint the commission fully with the details of the alleged failure.

Under 807 KAR 5:001, Section 20(4)(1)(a), if a determination is made that the complaint fails to establish a *prima facie* case, the complainant must be provided the opportunity to amend the complaint within a specified time. If the complaint is not timely amended to set forth a *prima facie* case, the complaint is dismissed.

Ms. Stadtlander asserts that Kenergy failed to comply with the following laws or regulations: 1) Kenergy personnel trespassed on Ms. Stadtlander's property by installing the AMI meter without her permission; 2) The AMI meter emits noise and radiation that violate U.S. Environmental Protection Agency ("EPA") air pollution regulations, and that the Commission is obligated to enforce said EPA regulations; 3) The AMI meter noise and radiation emissions violate trespassing laws; and 4) the AMI meter noise and radiation emissions violate nuisance laws.

1. Allegation of trespassing by Kenergy personnel.

Ms. Stadtlander asserts that Kenergy violated trespassing laws when its employees installed the AMI meter at Ms. Stadtlander's residence without her express consent. Under Kentucky law, trespass is a criminal offense defined as knowingly entering or remaining in a dwelling, in a building, or in or upon property without authorization, privilege or license to do so.¹ The Commission is a creature of statute; it has only such powers as have been granted to it by the General Assembly.² Pursuant to KRS 278.040 and 278.260, the Commission has the jurisdiction to adjudicate complaints that are within the scope of a utility's rates or services, and to enforce the provisions of KRS Chapter 278. Notably, KRS 278 does not give the Commission jurisdiction over alleged violations of Kentucky's criminal laws. Thus, the question before the Commission is whether Kenergy violated a statute, regulation, or tariff that the Commission is charged with enforcing when it installed the AMI meter at Ms. Stadtlander's residence.

Within Ms. Stadtlander's claim are two separate issues: whether Kenergy was required to obtain customer consent prior to installing an AMI meter and whether Kenergy was required to obtain customer consent prior to entering a member-customer's property.

The Commission authorized Kenergy to purchase and install the AMI meters to replace its existing electromechanical meters when the Commission granted Kenergy's request for a Certificate of Public Convenience and Necessity ("CPCN") for the AMI

¹ KRS 511.060, 511.070, 511.080.

² *Boone Co. Water and Sewer Dist. v. Public Serv. Comm'n*, 949 S.W.2d 588, 591 (Ky. 1997).

meters in Case No. 2014-00376.³ In that case, the Commission found that AMI meters were “necessary to provide adequate, reliable service” to member-customers.⁴ The Commission declined to mandate customer opt-outs in the deployment of AMI meters in Case No. 2012-00428, finding that a determination to include an opt-out provision should be at the discretion of each utility.⁵ The Commission stated that it did not support smart meter opt-outs due to the potential negative impact on operational benefits. However, based upon public comments regarding health and privacy concerns, the Commission would consider opt-out provisions if requested by a utility.⁶ The Commission further found that any opt-out provision should require those customers who opt out to bear the cost related to that decision.⁷ Here, Kenergy has not requested that the Commission approve, nor has the Commission required, an opt-out provision in conjunction with Kenergy’s installation of AMI meters.

Additionally, both Commission regulations and Kenergy’s tariff grant Kenergy the right of access to a meter owned by Kenergy that is located on a customer’s premises. 807 KAR 5:006, Section 20, states that a utility “shall at all reasonable hours have access to meters . . . and other property owned by it and located on customer’s premises for purposes of installation, maintenance, meter reading, operation, replacement, or removal of its property.” Kenergy’s Tariff Sheet No. 112 provides that

³ Case No. 2014-00376, *Application of Kenergy Corp. for an Order Issuing a Certificate of Convenience and Necessity to Install an Automated Metering and Infrastructure System* (Ky. PSC Feb. 24, 2015), Final Order at 5–6.

⁴ *Id.*

⁵ Case No. 2012-00428, *Consideration of the Implementation of Smart Grid and Smart Meter Technologies* (Ky. PSC Apr. 13, 2016), Final Order at 17.

⁶ *Id.*

⁷ *Id.*

Kenergy has the right to access a meter owned by Kenergy that is located on the customer's premises for the purpose of replacing, removing, installing, maintaining, or operating the meter.

The Commission finds that Ms. Stadlander fails to state a claim for which relief can be granted regarding her trespassing claims arising from the installation of the AMI meter because, based upon the facts set forth in the complaint, Kenergy did not violate any statute, regulation, or tariff provision that the Commission is charged with enforcing. Therefore, Ms. Stadlander fails to establish a *prima facie* case for this claim.

2. Allegation that the AMI meter emits noise and radiation that violate EPA air pollution regulations that the Commission is obligated to enforce.

Ms. Stadlander asserts that the AMI meter continuously emits noise and radiation, that the alleged noise and radiation emissions violate federal EPA regulations, and that the Commission has an obligation to enforce EPA regulations. However, Ms. Stadlander fails to state with specificity what EPA regulations she believes are being violated and the basis for her assumption that the Commission is authorized to enforce EPA regulations.

As discussed above, the Commission has the jurisdiction to adjudicate complaints that are within the scope of a utility's rates or services, and to enforce the provisions of KRS Chapter 278. No provision of KRS Chapter 278 authorizes the Commission to initiate EPA enforcement actions or to impose penalties for purported violations of the federal EPA regulations.

Since KRS Chapter 278 does not authorize the Commission to initiate EPA enforcement actions, and because Ms. Stadlander has not identified the basis for the Commission to initiate an EPA enforcement action, Ms. Stadlander states a claim that

is outside the scope of the Commission's jurisdiction. Therefore, Ms. Stadlander fails to set forth a claim for which relief can be granted, and fails to establish a *prima facie* case regarding the violation of EPA regulations and the Commission's obligation to enforce purported EPA violations.

3. Allegation that the AMI meter emits noise and radiation that violate trespassing laws.

Ms. Stadlander asserts that the AMI meter continuously emits noise and radiation, and that the alleged noise and radiation emissions violate trespassing laws. However, such a claim falls outside the scope of the Commission's jurisdiction.

As noted above, the Commission has jurisdiction, under KRS 278.040 and KRS 278.260, to adjudicate complaints that are within the scope of a utility's rates or services, and to enforce the provisions of KRS Chapter 278. Claims that noise or radiation violate trespassing laws are claims pertaining to property rights, and as such fall outside the scope of the Commission's jurisdiction over rates and services.

Because this claim falls outside the scope of the Commission's jurisdiction, Ms. Stadlander fails to state a claim regarding the alleged noise and radiation emitted by the AMI meter for which the Commission can grant relief. Therefore, Ms. Stadlander fails to set forth a *prima facie* case for this claim.

4. Allegation that the AMI meter emits noise and radiation that violate nuisance laws.

Similar to the above claim, Ms. Stadlander asserts that the AMI emits noise and radiation that violate nuisance laws. For the same reason set forth above, this claim pertains to property rights and falls outside the scope of the Commission's jurisdiction. Therefore, Ms. Stadlander fails to state a claim regarding the alleged noise and

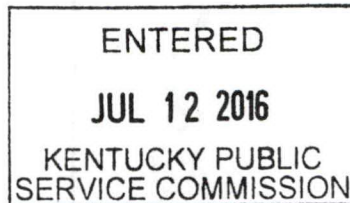
radiation emitted by the AMI meter for which the Commission can grant relief. Therefore, Ms. Stadlander fails to set forth a *prima facie* case regarding the alleged violation of nuisance laws.

IT IS THEREFORE ORDERED that:

1. Within 14 days of the date of this Order, Ms. Stadlander shall file an amended complaint that establishes a *prima facie* case pursuant to 807 KAR 5:001, Section 20(1)(c), or this matter shall be dismissed and removed from the docket.

2. Ms. Stadlander's request to separate this matter into two cases is denied.

By the Commission



ATTEST:


Acting Executive Director

Nancy A Stadlander
1306 Gobler Ford Rd
Lewisport, KENTUCKY 42351

*Kenergy Corp.
6402 Old Corydon Road
P. O. Box 18
Henderson, KY 42419

*Kenergy Corp.
Kenergy Corp.
6402 Old Corydon Road
P. O. Box 18
Henderson, KY 42419