

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KEN K. CRAIN)	
)	
COMPLAINANT)	CASE NO.
)	2016-00288
V.)	
)	
EDMONSON COUNTY WATER DISTRICT)	
)	
DEFENDANT)	

ORDER

This matter arises on an Amended Complaint tendered by Ken K. Crain (“Mr. Crain”) with the Commission on November 14, 2016. On July 25, 2016, Mr. Crain tendered a formal complaint (“Complaint”) alleging that Edmonson County Water District (“Edmonson County”) does not provide its customers with sufficient time to pay their bills before incurring a late fee. On August 1, 2016, Mr. Crain tendered an addendum to his Complaint requesting additional remedies. The Commission issued an Order on August 22, 2016, stating that it was unable to determine whether the Complaint established a *prima facie*¹ case and directing Mr. Crain to provide certain materials to enable the Commission to further investigate the merits of his Complaint. On September 1, 2016, Mr. Crain tendered his reply (“Reply”), which included copies of two monthly bills and his payment history. On October 26, 2016, the Commission issued a second Order finding that Mr. Crain failed to provide sufficient evidence to establish a

¹ See Black’s Law Dictionary (10th ed. 2014). A *prima facie* case exists when a party produces sufficient evidence to establish a fact or raise a presumption that is subject to further evidence that disproves or rebuts the fact or presumption.

prima facie case. Pursuant to Commission regulations, Mr. Crain was permitted the opportunity to amend his Complaint to establish a *prima facie* case within the designated time, or the matter would be dismissed. Further, in the October 26, 2016 Order, the Commission put Mr. Crain on notice that to establish a *prima facie* case, he needed to provide evidence that his late fee resulted from an improper act or omission on the part of Edmonson County, or that Edmonson County's time period for payment is unreasonable. On November 14, 2016, Mr. Crain filed an amended Complaint ("Amended Complaint").

Having reviewed the evidence of record, the Commission finds that Mr. Crain failed to establish a *prima facie* case in the Amended Complaint. The Commission further finds that Mr. Crain's Complaint should be dismissed.

BACKGROUND

According to Edmonson County's Tariff,² the past-due date is the 28th of the month for bills mailed out on the 15th of the same month, and the 13th of the following month for bills mailed out on the last day of the previous month.³ In reviewing the case record, Mr. Crain's account is in the billing cycle where bills are mailed no later than the last day of the month and due the 13th day of the following month. Thus, according to the terms of Edmonson County's Tariff and the case record, the past-due date for Mr. Crain's account is always the 13th day of the month. Edmonson County's Tariff provides for a 10 percent penalty if the bill is not paid by the past-due date.⁴

² As set forth in KRS 278.160, a tariff contains schedules showing all rates and conditions for service established and enforced by a utility.

³ Edmonson County Tariff (effective July 15, 2011) at Revised Sheet No. 3, Paragraph G(1).

⁴ Edmonson County Tariff at Revised Sheet No. 3, Paragraph G(1).

In his Complaint, Mr. Crain states that he pays the monthly bill he receives from Edmonson County using his bank's online bill payment system, and that he has incurred late fees on that bill because of the total time it takes to receive the bill in the mail, to process and remit payment from his bank's online bill pay, and for receipt of the bank's payment by Edmonson County.⁵ As relief, Mr. Crain requested in his complaint and its addendum that Edmonson County be required to make billing available by e-mail or text message; to allow customers 21 days to pay their bills; to reimburse costs incurred when customer accounts are hacked; and to reimburse his late fees.

Because the Complaint contained allegations only, and no evidence to support the allegations in contravention of the requirements set forth in 807 KAR 5:001, Section 20, the Commission directed Mr. Crain to file certain documents, including bills and evidence of payment, in an Order issued on August 22, 2016. In response, on September 1, 2016, Mr. Crain filed copies of two monthly bills, a copy of a delinquent account notice, and a copy of his billing and payment history from August 2015 through August 2016.⁶

Finding that the filed documents were not sufficient to establish a *prima facie* case, the Commission issued an Order on October 26, 2016, permitting Mr. Crain to file an amended complaint. Mr. Crain filed his Amended Complaint on November 14, 2016.

In his Amended Complaint, Mr. Crain did not file any additional documents to support his claim.⁷ Instead, Mr. Crain disputes that he failed to establish that his late

⁵ Complaint at 1–2.

⁶ Reply at 1.

⁷ The header of Mr. Crain's Amended Complaint references that the document consists of five pages, but, in the footer, Mr. Crain crossed out "1 of 6" so that it reads "1 of 1."

fee resulted from an improper act or omission on the part of Edmonson County, or that Edmonson County's time period for payment is unreasonable. To support his assertion, Mr. Crain argues that Edmonson County failed to provide evidence of the date it sends out monthly bills to customers. Further, Mr. Crain contends that if the payment period is reasonable, then Edmonson County and the Commission should have to pay all their bills using the same time period set forth in Edmonson County Tariff. Lastly, Mr. Crain asks why, if its computer system is secure, Edmonson County does not reimburse customers for costs incurred from hacking of customer accounts, and why, if Edmonson County can access its customers' bank accounts, Edmonson County customers cannot access Edmonson County's bank account.

DISCUSSION

Pursuant to 807 KAR 5:001, Section 20(1)(c), each complaint must state with "reasonable certainty" the act or omission that is the subject matter of the complaint. Further, 807 KAR 5:001, Section 20(4)(a), requires the Commission to determine whether a complaint establishes a *prima facie* case. A complaint establishes a *prima facie* case when, on its face, it states sufficient allegations that, if uncontroverted by other evidence, would entitle the complainant to the relief requested

Here, Mr. Crain, as the party filing a complaint, has failed to produce any evidence to support his claim that Edmonson County failed to provide him with sufficient time to pay his monthly bill. The billing documents filed by Mr. Crain on September 1, 2016, demonstrate that Edmonson County issued bills with payment due dates that complied with the terms of its Tariff. The documents also demonstrate that Mr. Crain was charged a late fee only once between August 2015 and August 2016, and that the

amount of the late fee and date it was imposed complied with the terms of the Tariff for late payment.

Not only did Mr. Crain fail to file evidence of improper acts or omission by Edmonson County to support his claim, Mr. Crain incorrectly asserts that it is Edmonson County, and not he, who should provide said proof. This assertion is contrary to well-settled law that the party filing a complaint with the Commission must provide sufficient evidence of his or her claims.⁸ Mr. Crain speculates, but provides no evidence, that Edmonson County does not timely mail monthly bills, or that Edmonson County fails to post payment on the same date it receives it. Similarly, Mr. Crain did not provide evidence that the payment period set forth in Edmonson County's Tariff is unreasonable. Unsupported allegations do not meet the burden borne by Mr. Crain to provide sufficient evidence to establish a *prima facie* case.

In his Amended Complaint, Mr. Crain again requested that the Commission require Edmonson County to reimburse costs incurred by customers if their financial accounts are hacked due to an act or omission by Edmonson County. The Commission first notes that Mr. Crain offered no evidence that he had incurred any costs from his financial accounts allegedly being hacked, much less that his financial accounts were indeed hacked due to any act or omission by Edmonson County. Further, as noted in the October 26, 2016 Order, the Commission lacks jurisdiction over any claims for fees or financial losses as a result of online payment information being "hacked." The

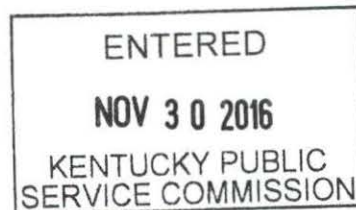
⁸ *Energy Regulatory Comm'n v. Kentucky Power Co.*, 605 S.W.2d 46, 50 (Ky. App. 1980).

Commission's statutory authority under KRS Chapter 278 is limited to the regulation of utility rates and service. Jurisdiction to enforce banking laws and to award damages for a breach of those laws rests elsewhere.⁹

For the above reasons, the Commission finds that Mr. Crain's Amended Complaint neither conforms to the requirements of 807 KAR 5:001, Section 20(1), nor establishes a *prima facie* case. Mr. Crain had two opportunities to provide evidence that his late fee resulted from an improper act, or omission, on the part of Edmonson County, or that Edmonson County's time period for payment is unreasonable. Because Mr. Crain has not shown that Edmonson County has performed an improper act or omission, his complaint fails to comply with 807 KAR 5:001, Section 20(1), and fails to establish a *prima facie* case. For these reasons the Commission finds that this matter should be dismissed pursuant to 807 KAR 5:001, Section 20(4)(a)(2).

IT IS THEREFORE ORDERED that Mr. Crain's Amended Complaint shall be dismissed and this case is removed from the Commission's docket.

By the Commission



ATTEST:


Executive Director

⁹ To the extent that Mr. Crain has questions regarding his financial accounts and credit cards being accessed by unauthorized users, he may wish to speak with banking and credit card representatives.

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