

“Home 100 AMP” and is addressed to “Brandon Holbrook” (November bill). The meter number on the November bill is 42567. The bill indicates a prior balance of \$171.77 and a current month’s charges of \$88.53. The amount due by December 10, 2018, is \$260.30. The amount due after December 10, 2018, is \$264.73. A statement printed on the bill reads, “If there is a balance forward, your account is subject to be disconnected, if not paid before 12/10/2018.” Also attached to Mr. Holbrook’s complaint were two forms entitled “Licking Valley RECC Transfer Work Flow.” Both forms are dated January 28, 2010. One form lists Brandon Holbrook as the “Out Customer” and Glen D. Holbrook as the “In Customer” on meter number 22775. On the other form Brandon Holbrook is the “In Customer” and Glen D. Holbrook is listed as the “Out Customer” on meter number 30191. On both forms, the service location is 998 Highway 1000, West Liberty, Kentucky. A letter dated May 3, 2019, from Licking Valley RECC addressed to Mr. Glen Holbrook at 560 Highway 1000, West Liberty, Kentucky, is also attached to Mr. Holbrook’s complaint. The letter references a disconnection of service on December 12, 2018, on an account in Brandon Holbrook’s name, but provides no service address or meter number.

By Order dated July 28, 2020, the Commission found that it was unable to determine from the information presented by Mr. Holbrook whether his complaint established a prima facie case, but found that further investigation into the merits of the complaint was warranted. The Commission directed Licking Valley RECC to assist in the investigation by filing with the Commission all transfer of service orders and documentation of telephonic or online requests for service concerning in whose name the Home 100 AMP electric service at 538 Highway 1000, West Liberty, Kentucky, was in as of November 21, 2018, and copies of all bills, disconnect notices, and any other notices

issued in connection with service address 538 Highway 1000, West Liberty, Kentucky from November 1, 2018, through February 10, 2019 for Home 100 AMP service. On August 18, 2020, August 19, 2020, and August 25, 2020, Licking Valley RECC filed various documents, which are fully described in the Commission's October 13, 2020 Order in this proceeding¹ wherein the Commission found that Mr. Holbrook's complaint did not conform to the requirements of 807 KAR 5:001, Section 20(1), nor did it establish a prima facie case because Mr. Holbrook was not the customer of record on the account, and was therefore not entitled to receive prior notice of a service disconnection due to nonpayment.²

Mr. Holbrook was afforded 30 days in which to amend his complaint. On November 12, 2020, Mr. Holbrook filed an amended complaint with the Commission. The amended complaint included an affidavit from Brandon Holbrook stating that on November 30, 2018, he spoke with a representative of Licking Valley RECC by telephone and asked that his father, Glen Holbrook, be added to his account. Adding Glen Holbrook to Brandon Holbrook's account would have resulted in Licking Valley RECC having a duty to inform Mr. Glen Holbrook the service was to be disconnected due to nonpayment. On January 11, 2021, the Commission ordered Licking Valley RECC to satisfy the matter complained of in Mr. Holbrook's amended complaint or to file a written answer with the Commission.

¹ Order at 3–5. A form entitled "Licking Valley RECC Reconnect-Same Customer-WF" was filed by Licking Valley RECC on August 18, 2020, and indicated Glen Holbrook paid a \$340 deposit on December 18, 2018.

² *Id.* at 9.

On February 12, 2021, Licking Valley RECC filed a statement with the Commission indicating it had no record of a telephone request from Brandon Holbrook to add Glen Holbrook to Brandon Holbrook's account. Further, Licking Valley RECC stated a refund of the deposit amount paid by Mr. Holbrook was mailed to Brandon Holbrook in care of Glen Holbrook at 560 Highway 1000, West Liberty, Kentucky, on January 25, 2021, and that the item was returned to Licking Valley RECC by the post office on February 4, 2021.

On March 17, 2021, Licking Valley RECC filed a statement with the Commission indicating that a refund check issued to "Mr. Brandon Holbrook, c/o Mr. Glen Holbrook" was cashed on February 10, 2021, at 3:34 p.m. Attached to Licking Valley RECC's statement was a copy of a canceled check drawn on Bank of the Mountains in West Liberty, Kentucky, in the amount of \$345.17. The check was made payable to "Brandon Holbrook c/o Glen Holbrook" and is endorsed on the reverse side by both Brandon Holbrook and Glen Holbrook. A copy of the canceled check is attached to this Order.

DISCUSSION

KRS 278.260 grants the Commission original jurisdiction over complaints as to rates or service of any utility. Mr. Holbrook's complaint against Licking Valley RECC involves the allegation of disconnection of service for nonpayment without prior notification to the customer. As this issue is a matter of the service offered by a utility, the Commission has jurisdiction to hear the complaint. However, in fixing a remedy for any substantiated complaint, the Commission is limited by the terms and conditions set forth in the utility's tariff. No provision of KRS Chapter 278 confers upon the Commission the authority to award damages, and the Kentucky courts have refused to extend the Commission's jurisdiction to include monetary damage claims. In *Carr v. Cincinnati Bell*,

Inc.,³ a customer brought an action in Kenton Circuit Court seeking, among other things, compensatory damages for tortious breach of contract for telephone service. Holding that the Commission had exclusive jurisdiction over the matter, Kenton Circuit Court dismissed the suit. Reversing the circuit court's opinion on this issue, the Court of Appeals said:

[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 §14.⁴

Therefore, the Commission lacks the authority or jurisdiction to adjudicate Mr. Holbrook's claim for damages. If Mr. Holbrook's complaint were to be substantiated and the Commission were to find that the electric service to the meter at issue was disconnected for nonpayment without prior notification as required by 807 KAR 5:006, Section 15(1)(f)(1)(a), the only remedy the Commission could offer Mr. Holbrook would be a refund of the deposit he paid at the time service was reconnected.

Although Licking Valley RECC disputes Mr. Holbrook's and Brandon Holbrook's claims that Brandon Holbrook made a telephonic request that Licking Valley RECC add Glen Holbrook's name to the account in question, Licking Valley RECC has refunded the deposit paid by Mr. Glen Holbrook, and the refund has been received. Having considered the complaint and being otherwise sufficiently advised, the Commission finds that the only relief it has authority to award has already been received, and therefore this complaint should be dismissed with prejudice and removed from the Commission's docket. Further,

³ *Carr v. Cincinnati Bell, Inc.*, 651 S.W.2d 126 (Ky. App. 1983).

⁴ *Id.* at 128.

the Commission finds it lacks jurisdiction to grant the additional relief requested by Mr. Holbrook.

IT IS THEREFORE ORDERED that the complaint filed with the Commission on November 7, 2019, is dismissed with prejudice and this matter shall be removed from the Commission's docket.

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By the Commission



ATTEST:

A handwritten signature in blue ink that reads "Linda C. Ludwell". The signature is written in a cursive style.

Executive Director

ATTACHMENT

ATTACHMENT TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2020-00224 DATED APR 02 2021

ONE PAGE TO FOLLOW

L **LICKING VALLEY**
RURAL ELECTRIC COOPERATIVE
P.O. BOX 800
WEST LIBERTY, KY 41472

W **73-tiso/4210**
BANK OF THE MOUNTAINS
WEST LIBERTY, KENTUCKY 41472

THREE THOUSAND SEVEN HUNDRED SEVENTY-NINE AND 17/100

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TO C/O GZ
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ORDER INST L 07
Of

VOIO An::Q 120 DAYS

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SCA P/RE HASA COL/RED BACK/RE/AC - B/RECK CON/CA/RE/MC/RP/HTING



DO NOT WRITE OR STAMP OR SIGN BELOW THIS LINE

WARNING - DO NOT CASH CHECKS FROM OTHER BANKS

[Signature]

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