

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JUSTIN TALLIO	)	
	)	
COMPLAINANT	)	
	)	CASE NO.
V.	)	2021-00457
	)	
LOUISVILLE GAS AND ELECTRIC COMPANY	)	
	)	
DEFENDANT	)	

ORDER

This matter arises upon a complaint filed by Justin Tallio alleging that Louisville Gas and Electric Company (LG&E) violated a statute, regulation, tariff, or Commission Order by failing to timely repair streetlights. On December 20, 2021, the Commission issued an Order finding that, pursuant to 807 KAR 5:001, Section 20(4)(a)(1)-(2), Mr. Tallio failed to establish a *prima facie* case that LG&E violated a statute, regulation, tariff, or Order for which the Commission may grant relief, and affording Mr. Tallio the opportunity to file an amended complaint. On January 10, 2022, Mr. Tallio filed an amended complaint, changing the manner of relief sought.

LEGAL STANDARD

Pursuant to KRS 278.260, the Commission has jurisdiction over complaints regarding rates or service. Commission regulation 807 KAR 5:001, Section 20(4)(a), requires the Commission to examine the complaint to determine if the complaint establishes a *prima facie* case that the utility has violated a statute, regulation, tariff, or

order for which the Commission may grant relief.<sup>1</sup> 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. If the Commission determines that the complaint does not establish a *prima facie* case, then the Commission affords the complainant the opportunity to amend the complaint within a specified time.

#### COMPLAINT AND AMENDED COMPLAINT

On December 7, 2021, Mr. Tallio filed a complaint alleging that he provided the locations of a total of 24 non-functioning streetlights to LG&E on October 13, 2021, October 14, 2021, and on November 16, 2021. Mr. Tallio claimed that six streetlights had still not been repaired as of the filing of his complaint. Mr. Tallio's requested relief was for LG&E to be required to make a donation of \$5,000 to a non-profit neighborhood association to compensate neighbors for LG&E's alleged inability to maintain its equipment in working order.

In the December 20, 2021 Order, the Commission found that Mr. Tallio requested relief in the form of compensatory damages, which is outside the scope of the Commission's jurisdiction, and sought relief on behalf of others, which would constitute the unauthorized practice of law under 807 KAR 5:001, Section 4(4). Mr. Tallio was afforded the opportunity to amend his complaint within 20 days of the December 20, 2021 Order.

Mr. Tallio timely filed an amended complaint, in which he alleged that the Commission dismissed his complaint because maintenance of street lighting is outside the Commission's jurisdiction. Mr. Tallio cited to the Commission's statutory authority

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<sup>1</sup> 807 KAR 5:001, Section 20(4)(a).

under KRS 278.260(1) and KRS 278.010(12) to regulate a utility's rates and service. Mr. Tallio amended his requested relief for the Commission to require LG&E to pay \$5,000 to Mr. Tallio as a "punitive fine."<sup>2</sup>

### DISCUSSION AND FINDINGS

The Commission first notes that the December 20, 2021 Order did not "dismiss" Mr. Tallio's complaint, but instead rejected the complaint for filing for failing to state a *prima facie* case. In that Order, the Commission explained that Mr. Tallio sought compensatory damages, or money awarded to a person to compensate for an injury or incurred loss. As the Commission explained, the award of compensatory damages is outside the scope of the Commission's statutory authority. Also in that Order, the Commission did not state that it does not have statutory authority over a utility's rates or service, which includes streetlights; the Commission said that Mr. Tallio seeks a form of relief in compensatory damages that is outside the scope of the Commission's statutory authority.

Having reviewed Mr. Tallio's amended complaint, the Commission finds that the amended complaint did not establish a *prima facie* case that the utility has violated a statute, regulation, tariff, or order for which the Commission may grant relief because Mr. Tallio continues to request damages that are outside the scope of the Commission's statutory authority. Instead of terming the \$5,000 as compensatory damages to be paid to a third party, Mr. Tallio sought punitive damages in the form of a \$5,000 fine to be paid to Mr. Tallio in his amended complaint. Whether Mr. Tallio terms the \$5,000 as compensatory damages or a punitive fine, Mr. Tallio requests relief that is outside the

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<sup>2</sup> Amended complaint (filed Jan. 10, 2022) at unnumbered page 2.

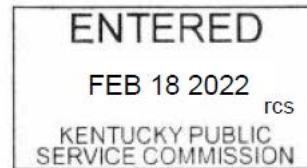
scope of the Commission's statutory authority. For this reason, we find that Mr. Tallio failed to establish a *prima facie* case in the amended complaint. Because Mr. Tallio was afforded the opportunity to amend his complaint in accordance with 807 KAR 5:001, Section 20 and failed to establish a *prima facie* case, 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:

1. Mr. Tallio's amended complaint is dismissed for failing to state a *prima facie* case.
2. A copy of this Order shall be served upon Mr. Tallio by U.S. mail to 432 E. Ormsby Ave., Louisville, Kentucky 40203.
3. This matter is closed and removed from the Commission's docket.

By the Commission

Commissioner Marianne Butler did not participate in the deliberations or decision concerning this case.



ATTEST:

  
Executive Director

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