

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THOMAS LOECKEN)	
)	
COMPLAINANT)	
)	
V.)	CASE NO.
)	2024-00410
FARMERS RURAL ELECTRIC COOPERATIVE)	
CORPORATION.)	
)	
DEFENDANT)	

ORDER

On December 27, 2024, Thomas Loecken tendered a formal complaint with the Commission against Farmers Rural Electric Cooperative Corporation (Farmers RECC), alleging that Farmers RECC entered Mr. Loecken's property to trim trees and that Farmers RECC used and damaged Mr. Loecken's property. Mr. Loecken's formal complaint stated, "[m]y complaint is for damages to my property in the forms of trees ground up, usage of my property, tore up fences and improper repairs to fences, timber removed, no known boundaries of easements, and whatever other penalties may apply."¹ For the reasons discussed below, the Commission finds that a *prima facie* case has not been established and the Mr. Loecken should be given 20 days to amend the complaint to establish a *prima facie* case or the case should be dismissed.

¹ Complaint at 1.

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.² 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.

Having reviewed Mr. Loecken's complaint, the Commission finds that he has not established a *prima facie* case that the utility has violated a statute, regulation, tariff, or order for which the Commission may grant relief because it appears Mr. Loecken is seeking compensatory damages, which is outside the scope of the Commission's jurisdiction. Pursuant to KRS 278.040, the Commission has jurisdiction over the "rates" and "services" of utilities as defined by KRS 278.010. Mr. Loecken's request for damages does not fall under that category. Further, it is well-established that the Commission does not have statutory authority to award damages in any matter before the Commission. For example, in *Carr v. Cincinnati Bell*, the Kentucky Court of Appeals held that the legislature did not delegate to the Commission the power to adjudicate claims for damages and it would not be reasonable to infer that the Commission is empowered to adjudicate claims for damages.³

² 807 KAR 5:001, Section 20(4)(a).

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

Additionally, Mr. Loecken does not cite to any statute, regulation, tariff, or order that Farmers RECC has allegedly violated. It appears from Mr. Loecken's complaint that he takes issue with the fact that service members from Farmers RECC came onto his property to trim trees.

Mr. Loecken is a utility customer of Farmers RECC as is evidenced by the "FRECC Application of Membership & Reconnect of Electric Service" that was executed on March 16, 1999; provided as an attachment to the formal complaint.⁴ The Commission has no evidence that Mr. Loecken at any point severed his relationship as a customer of Farmers RECC. Having signed the "FRECC Application of Membership & Reconnect of Electric Service," Mr. Loecken is bound to the application's terms and conditions including Item 3 of the application which states, "[t]he Applicant will comply with and be bound by the provisions of the Bylaws of the Cooperative, Rates and such Rules and Regulations as may, from time to time, be adopted by the Cooperative."⁵ Farmers RECC's tariff currently on file with the Commission has several provisions relating to Mr. Loecken's formal complaint:

6. APPLICATION FOR SERVICE - Each prospective member desiring electric service shall be required to sign and submit the Cooperative's "Application for Membership and Electric Service," before service is supplied by the Cooperative and provide the Cooperative with necessary easements or right-of-way permits. In conjunction with a prospective member's application for service or thereafter, the Cooperative may require such reasonable information and documentation relevant to the service or parties as it deems appropriate, including (but not limited to) load and use details, permits, easements, rights-of-way, Social Security or federal tax

⁴ Complaint at 5.

⁵ Complaint at 5, Item 3.

identification numbers, birth dates, telephone numbers, addresses, and places of employment.⁶

8. RIGHT OF ACCESS. The Cooperative, its employees and agents shall have reasonable access to meters, service connections, poles, lines, and any other property owned or operated by the Cooperative that may be located on, in, over, or under a member's property or premises for any necessary or appropriate purpose, including (but not limited to) placing, locating, building, constructing, inspecting, operating, replacing, and maintaining the Cooperative's facilities. The Cooperative's right of access specifically includes the right and privilege of establishing and maintaining proper right-of-way clearance for its facilities, and the Cooperative may, in its sole discretion, cut, trim, clear, retard, relocate or remove (by physical or chemical means, such as with herbicides) any trees, bushes, structures, and other objects that are of such proximity to the Cooperative's facilities that they may interfere with or create a hazard to the operation or maintenance of the facilities. Any employee or agent of the Cooperative whose duties require him or her to access a member's property or premises shall wear a distinguishing uniform or insignia identifying him or her as an employee of the Cooperative, or carry on his or her person and display upon request a badge or other identification which may identify him or her as an employee or agent of the Cooperative.⁷

26. EASEMENTS - Each member, and all other parties holding an interest in or to a relevant property, shall grant or convey to the Cooperative, without cost, any temporary or permanent easements reasonably required by the Cooperative to provide electric service to that member or property and for the installation, maintenance, and operation of the Cooperative's electrical distribution system, both existing and future, with rights of ingress and egress for such purposes over the property, provided such electrical distribution system is located on real estate owned, rented or otherwise controlled by the member. The failure or refusal to convey easements shall constitute grounds for denying or discontinuing service.⁸

⁶ Farmers RECC's Tariff, Sheet No. 1, Item 6, effective Apr. 4, 2018.

⁷ Farmers RECC's Tariff, Sheet No. 2, Item 8, effective Apr. 4, 2018.

⁸ Farmers RECC's Tariff, Sheet No. 10.001, Item 26, effective Apr. 4, 2018.

31. REFUSAL OR TERMINATION OF SERVICE BY THE COOPERATIVE - Subject to applicable law and following any necessary notice, the Cooperative may refuse or terminate service to a prospective member or member under the following conditions: A. for noncompliance with the Cooperative's tariffed rules and regulations, Kentucky Public Service Commission regulations, or other applicable rule, law, code, or standard; B. if a dangerous condition is found to exist relating to the Cooperative's service which could subject any person to imminent harm or result in substantial damage to the property of the Cooperative or others; C. if a member refuses or neglects to provide reasonable access to the premises for installation, operation, meter reading, maintenance or removal of the Cooperative's property; D. for outstanding indebtedness or nonpayment of bills; or E. if the Cooperative discovers evidence that the member has sought or obtained unauthorized service by illegal use or theft or if the meter or other equipment belonging to the Cooperative is tampered or interfered with.⁹

32. METER ACCESS - Meters shall be located at a site designated by the Cooperative and shall be easily and safely accessible for reading, inspection, testing, repairing, and adjusting by the Cooperative and its employees and agents. Should conditions at or near a member's meter threaten or interfere with such access, the member shall be notified by the Cooperative of the issue(s) and shall take such action as to resolve the issue(s) without delay. If a member refuses or neglects to provide appropriate access to a meter, the Cooperative may refuse or terminate service.¹⁰

Furthermore, Commission regulation 807 KAR 5:006, Section 15(1)(a) and (c), states that a utility may terminate service for a customer's failure to comply with applicable tariff rules, and that a utility may terminate or refuse service to a customer who refuses or neglects to provide reasonable access to the premises for installation, operation, meter reading, maintenance, or removal of utility property. Thus, in accordance with Farmers RECC's

⁹ Farmers RECC's Tariff, Sheet No. 10.002, Item 31, effective Apr. 4, 2018.

¹⁰ Farmers RECC's Tariff, Sheet No. 10.002, Item 32, effective Apr. 4, 2018.

customer application, its tariff, and Kentucky regulations, Farmers RECC has valid authority to enter Mr. Loecken's property in performance of its duties and obligations as the utility provider for Mr. Loecken.

However, in accordance with 807 KAR 5:001, Section 20(4)(a)(1)-(2), the Commission finds that Mr. Loecken should be afforded the opportunity to amend his complaint. The Commission further finds that Mr. Loecken should file an amended complaint within 20 days of the issue date of this Order. Mr. Loecken may file his amended complaint by U.S. mail or by email to PSCED@ky.gov.

IT IS THEREFORE ORDERED that:

1. Mr. Loecken's complaint fails to state a *prima facie* case.
2. Mr. Loecken shall have 20 days from the issue date of this Order to file an amended complaint with the Commission that conforms to the requirements of 807 KAR 5:001, Section 20(1), and that states a *prima facie* case.
3. Mr. Loecken may file his amended complaint with the Commission by U.S. mail to P.O. Box 615, Frankfort, Kentucky 40602-0615 or by email to PSCED@ky.gov. Mr. Loecken shall include the Case No. 2024-00410, in all filings with the Commission.
4. A copy of this Order shall be served upon Mr. Loecken through the U.S. Postal Service and sent certified mail, return receipt requested, and by First Class mail to 1098 Cub Run Hwy, Munfordville, Kentucky 42765. Service shall be considered completed on the first day the U.S. Postal Service attempts to deliver the certified mail.

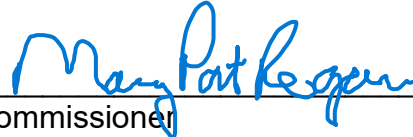
PUBLIC SERVICE COMMISSION

Chairman



Vice Chairman

Commissioner



ATTEST:


Executive Director



Thomas Loecken
1098 Cub Run Hwy
Munfordville, KY 42765

*Farmers R.E.C.C.
504 South Broadway
P. O. Box 1298
Glasgow, KY 42141-1298