

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DR. BART MACFARLAND, DMD)	
)	
COMPLAINANT)	
)	
V.)	CASE NO. 97-012
)	
KENTUCKY UTILITIES COMPANY)	
)	
DEFENDANT)	

O R D E R

Complainant brings a complaint against Kentucky Utilities Company ("KU") in which he seeks compensatory and punitive damages resulting from a defective electric transformer. Pursuant to Commission Regulation 807 KAR 5:001, Section 12(a), the Commission has reviewed this complaint and finds that the Complainant seeks relief which is beyond the Commission's jurisdictional authority.

Commission Regulation 807 KAR 5:001, Section 12(4), requires the Commission to review each formal complaint upon its filing to determine whether the complaint establishes a prima facie case. A complaint establishes a prima facie case when, on its face, it sets forth sufficient allegations that if uncontradicted by other evidence would entitle the Complainant to the requested relief. If a complaint fails to establish a prima facie case, the Commission must notify the Complainant and provide a reasonable opportunity to amend the complaint.

The Complainant alleges the following: Bart MacFarland is a Doctor of Dental Medicine whose offices are located in Paris, Kentucky. KU furnishes electric power to these offices. As a result of a recent power failure at those offices, KU discovered that the electric transformer used to provide electric service to Dr. MacFarland was defective. As a result, KU had, over an unknown period of time, provided electricity to Dr. MacFarland's office at unacceptably higher voltage levels. Supplying electricity at these high voltage levels has resulted in damages of \$12,000 to Dr. MacFarland.

Complainant further contends that, based upon either the legal theories of negligence or strict liability, KU is responsible for his damages and should be required to compensate him. He also requests punitive damages of an unstated amount and reimbursement of his costs, including reasonable attorney fees.

The Commission has the statutory duty of regulating utilities and enforcing the provisions of KRS Chapter 278. KRS 278.040(1). It "has exclusive jurisdiction over the regulation of rates and service of utilities" and "original jurisdiction over complaints as to rates or service of any utility." KRS 278.040(2) and 278.260(1).

While exercising jurisdiction over service complaints, the Commission's authority is limited to determining "the just, reasonable, safe, proper, adequate or sufficient rules, regulations, practices, equipment, appliances, facilities, service or methods to be observed, furnished, constructed, enforced or employed, and . . . fix[ing] the same by its order, rule or regulation." KRS 278.280(1). It does not possess the authority to award compensatory or punitive damages.

Kentucky courts have long held that the Commission lacks the legal authority to award monetary damages. See Carr v. Cincinnati Bell, Inc., Ky.App., 651 S.W.2d 126, 128 (1983) ("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.")¹ Other jurisdictions have similarly held. See, e.g., Southern Bell Telephone & Telegraph Co. v. Mobile American Corp., 291 So.2d 199 (Fla. 1974); Muskegon Agency, Inc. v. General Telephone Co., 65 N.W.2d 748 (Mich. 1954); Consumers Guild of America, Inc. v. Illinois Bell Telephone Co., 431 N.E.2d 1047 (Ill. App. Ct. 1981); Lahke v. Cincinnati Bell, Inc., 439 N.E.2d 928 (Ohio App. Ct. 1981).

As the only relief which Complainant seeks is monetary damages and as the award of such damages is outside the Commission's jurisdiction, the Commission finds that complaint fails to state a prima facie case and, if not amended to request relief which is within the Commission's authority, should be dismissed.

IT IS THEREFORE ORDERED that:

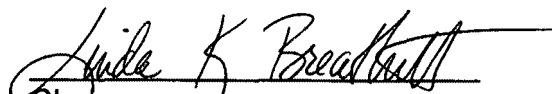
1. Complainant shall have 20 days from the date of this Order to file an amended complaint which sets forth a prima facie case against KU.

¹ See also Ash Avenue Sanitation Co., Case No. 8519 (Jul. 29, 1982) (holding that the Commission cannot award damages resulting from a breach of a contract); Edwards v. South Central Bell Telephone Co., Case No. 8131 (Feb. 20, 1981) (finding that, "the Commission, an administrative body, is without jurisdiction to consider or award monetary damages"); Triport Disposal Co., Case No. 7979 (May 15, 1981) (holding that the damages arising out of a breach of contract "are civil matters over which the Commission has no jurisdiction").

2. In the event that an amended complaint is not filed within 20 days of the date of this Order, this case shall be dismissed without further Order.

Done at Frankfort, Kentucky, this 21st day of January, 1997.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director