

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|------------------------------|---|-----------------|
| PETE GUS KAPPAS |) | |
| |) | |
| COMPLAINANT |) | |
| |) | |
| v. |) | CASE NO. 98-559 |
| |) | |
| WESTERN KENTUCKY GAS COMPANY |) | |
| |) | |
| DEFENDANT |) | |

O R D E R

On October 27, 1998, Pete Gus Kappas filed a complaint with the Commission alleging that Western Kentucky Gas Company ("WKG") violated the notice requirement for termination of service found in 807 KAR 5:006, Section 14(1)(e).¹ The complaint relates the following sequence of events: WKG informed Mr. Kappas that his gas meter would be replaced and that employees needed access to his gas appliances before reinstating service; Mr. Kappas refused access but agreed to close all valves going to gas appliances so that the gas pressure could be tested; WKG replaced and locked the meter on July 20, 1998; Mr. Kappas was informed by WKG that the meter would not be unlocked until access to the appliances was granted; Mr. Kappas again refused access, told WKG employees that the locked meter was of no use to him, and requested that

¹ 807 KAR 5:006, Section 14, pertains to refusal or termination of service by a utility. Section 14(1)(e) specifically states that a utility may refuse or terminate service for noncompliance with state, municipal or other codes, rules and regulations but only after ten days' written notice has been given to the customer, unless ordered to terminate immediately by a governmental official.

the meter be removed; WKG removed the meter; Mr. Kappas filed this formal complaint with the Commission. Mr. Kappas requests eighty-five thousand dollars as relief.

Pursuant to Commission Regulation 807 KAR 5:001, Section 12(4)(a), upon receipt of a formal complaint the Commission must determine whether its sets forth sufficient facts to constitute a prima facie case. A prima facie case exists when, taking the facts set forth in the complaint as true, the complainant is entitled to the relief requested. In the complaint, Mr. Kappas requests that he receive eighty-five thousand dollars as relief for WKG's alleged violation of the ten-day notice requirement in 807 KAR 5:006, Section 14(1)(e). The complaint fails to state a prima facie case.

The complaint fails to state a prima facie case for two reasons. First, WKG did not terminate or refuse gas service to Mr. Kappas in violation of 807 KAR 5:006, Section 14(1)(e). Pursuant to 807 KAR 5:022, Section 9(17)(3), the utility is required to "test all piping downstream from the meter for gas leaks, each time gas is turned on by the utility, by observing that no gas passes through the meter when all appliances are turned off. The utility shall refuse to serve until all gas leaks so disclosed have been properly repaired." WKG had both the right and duty to terminate service to Mr. Kappas until it had ensured that there were no gas leaks. In order to perform the necessary test, WKG must confirm that each gas appliance is off. The utility cannot do so if it is denied reasonable access to the customer's premises. Moreover, given the extreme danger of gas leaks, it would be unreasonable for WKG to rely on a customer to turn off each of the appliances so that the pressure test could be performed. WKG, therefore, acted pursuant to 807 KAR 5:006, Section 14(1)(b), in terminating service without advance notice to Mr. Kappas due to the presence of a dangerous condition.

Further, the facts as stated in the complaint demonstrate that Mr. Kappas was fully informed of the reason that his service was terminated and what he must do to have service restored. Rather than seeking restoration of service, Mr. Kappas admits in the complaint that he requested WKG to remove the meter: "I told them that a shut off and locked valve on the gas meter wouldn't do me any good and that they could just take a non working [sic] meter out...." According to the complaint and the events described by Mr. Kappas, the meter was removed from service following his request for termination of service. A utility has no duty to send any written notice when the customer requests the removal of his meter.

Second, the Commission does not have the statutory authority to require WKG to pay Mr. Kappas monetary damages. Pursuant to KRS 278.990(1) the Commission has the authority to impose a civil penalty of not more than two thousand five hundred dollars (\$2,500) for each willful violation of any provision of Chapter 278 or Commission regulation by a utility. Moreover, KRS 278.990(2) states that amounts imposed and collected pursuant to 278.990(1) must be paid into the state treasury. In Carr v. Cincinnati Bell, Inc., 651 S.W.2d 126, 128 (Ky. App. 1983), Kentucky's highest court held that only courts have jurisdiction to require a utility to pay monetary damages to a complainant.

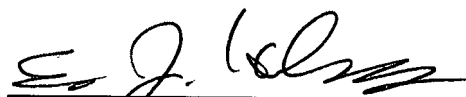
Based on the failure of the Kappas complaint to state a prima facie case, the complaint will be dismissed. In the event that there are additional facts not set forth in the complaint upon which relief can be granted, a new complaint should be filed.

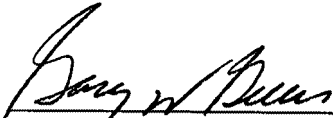
IT IS THEREFORE ORDERED that the Kappas complaint is dismissed without prejudice for failure to state a prima facie case.

Done at Frankfort, Kentucky, this 18th day of November, 1998.

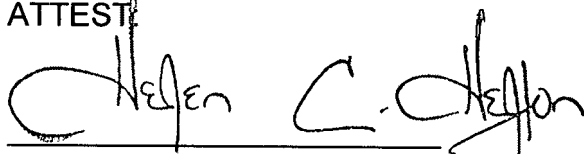
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