

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

TROY SEALE)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 2005-00011
)	
JESSAMINE-SOUTH ELKHORN)	
WATER DISTRICT)	
)	
DEFENDANT)	

O R D E R

On January 4, 2005, Troy Seale (“Complainant”) filed with the Commission a formal complaint against Jessamine-South Elkhorn Water District (“District”) alleging that the District is acting unreasonably in threatening to terminate Complainant’s water service. On January 31, 2005, the District filed a response to the allegations contained in the complaint.

The complaint and the answer outline each party’s recollection of the events and actions in this matter. We have reviewed the record in this case and find the following facts: The Complainant owns farm property and is a customer of the District. The Complainant hired a fencing contractor to replace a plank fence. The Complainant requested the District to mark or flag its line prior to construction by the fencing contractor.

The District's maintenance contractor flagged its water line on the property.¹ The fencing contractor damaged the District's water line while replacing the fence. The District had the water line repaired by its maintenance contractor and billed Complainant's fencing contractor for damages. The fencing contractor directed the District to seek collection from Complainant. The District then billed the Complainant for damages. The Complainant denies liability for damages and refuses to pay for damages. The District relies upon Section 23 of its filed tariff in holding the Complainant liable for damages and for authority to terminate water service for failure to pay damages. The Complainant also relies upon Section 23 in that the fencing contractor, not the Complainant, damaged the line. The Complainant asks the Commission to prohibit the District from terminating his water service. The District asks that the Commission order the Complainant to pay for damages.

Having reviewed the complaint and answer, the Commission finds that the issues and all material facts are set out in the pleadings and are sufficient for the Commission to render a decision. As KRS 278.260 provides that the Commission may not issue an Order affecting rates or service without a public hearing, we further find that the parties should be given 15 days to request in writing an evidentiary hearing to present any evidence that is material to the issues and not contained in the pleadings. If no request for such hearing is made within the time period, the parties shall be deemed to have waived a hearing, and this matter will stand submitted to the Commission for a decision upon the record.

¹ While there is a dispute about whether or not the marking was done properly, this is not material to the issue as to whether the District can terminate Complainant's water service for damaging the line or for failure to pay the claimed damages.

IT IS THEREFORE ORDERED that:

1. Either party may file a written request for an evidentiary hearing within 15 days from the date of this Order.

2. If a party fails to file a written request for an evidentiary hearing within 15 days, then the party shall be deemed to have waived its right to such hearing.

3. If no written request is filed within the allotted time, this case shall stand submitted for decision upon the existing record.

Done at Frankfort, Kentucky, this 17th day of March, 2005.

By the Commission

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and flourishes, positioned above a horizontal line.

Executive Director

Case No. 2005-00011