

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BRUCE WILLIAM STANSBURY	)	
	)	
COMPLAINANT	)	
	)	
V.	)	CASE NO. 2008-00277
	)	
SHELBY ENERGY COOPERATIVE, INC.	)	
	)	
DEFENDANT	)	

ORDER

For the following reasons, the Commission hereby orders that the complaint filed on August 20, 2008 in the above-styled matter be dismissed without prejudice.

On August 20, 2008,<sup>1</sup> Bruce William Stansbury ("Stansbury") brought this action against Shelby Energy Cooperative, Inc. ("Shelby Energy"), claiming that Shelby Energy had financially damaged its customers and impaired its financial status through a series of billing errors and improper accounting practices. Stansbury also claims that Shelby Energy's employment practices over the past several years have resulted in high employee turnover, which he claims has contributed to the billing errors and other issues, including problems with worker safety. In his request for relief, Stansbury asks the Commission to order Shelby Energy to undergo a management audit, including a review of the utility's billing and payment practices and "a review of all hiring and

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<sup>1</sup> Stansbury filed his original complaint in this matter on July 7, 2008. However, on July 29, 2008, the Commission entered an Order requiring him to file a more definite statement of his complaint against Shelby Energy.

termination of Shelby Energy employees for the last 7 years to determine if hiring practices have irrevocably impaired the ability of Shelby Energy to remain a profitable company benefiting Kentucky consumers.”

Shelby Energy filed its answer to Stansbury's complaint on September 5, 2008, along with a motion to dismiss the complaint with prejudice for failure to state a claim upon which the Commission may grant relief. In its answer, Shelby Energy admits that it had billing errors in 2007 which resulted in a failure to pass through the East Kentucky Power Cooperative, Inc. base fuel cost increase effective August 1, 2007. However, Shelby Energy claims that it corrected the error and properly billed its customers for the under-collection pursuant to a plan approved by the Commission in December 2007.<sup>2</sup> Shelby Energy denies the remainder of Stansbury's claims and asks that the Commission dismiss the complaint.

#### BACKGROUND

On March 7, 2008, as a result of an investigation into the accidental death of a contractor working on a distribution line project for Shelby Energy on November 12, 2007, the Commission opened an investigation in Case No. 2008-00069.<sup>3</sup> On September 29, 2008, the Commission entered a final Order in Case No. 2008-00069

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<sup>2</sup> The billing correction plan referenced by Shelby Energy was not formally approved by a Commission order, but it was accepted by Commission Staff following consultation with the utility.

<sup>3</sup> Case No. 2008-00069, Shelby Energy Cooperative, Inc. – Alleged Failure to Comply with KRS 278.042. The Order initiating Case No. 2008-00069 was issued on March 7, 2008 – four months prior to July 7, 2008, the date the original complaint in this matter was filed.

which, among other requirements, ordered Shelby Energy to undergo a full management audit. According to the September 29, 2008 Order:

The management audit will review all aspects of Shelby Energy's executive management, including its strategic and corporate planning as well as its organizational structure and the role of Shelby Energy's board of directors. The management audit will also review all aspects of Shelby Energy's member services organization, its financial management, human resource and support functions, and its engineering, operations and construction organization. The audit will also include a special focus on all aspects of Shelby Energy's safety operations and billing and collections function.<sup>4</sup>

On November 10, 2008, the Commission issued a request for proposals ("RFP") for consulting services to conduct a management audit pursuant to the September 29, 2008 Order. The RFP provides that the objective of the Shelby Energy management audit will be

to examine all aspects of Shelby Energy's management and operations. This will include a broad review of all aspects of Shelby Energy's executive management, including its strategic and corporate planning as well as its organizational structure and the role of Shelby Energy's board of directors. The audit will also review all aspects of Shelby Energy's member services organization, its financial management, human resource and support functions, and its engineering, operations and construction organization. The audit will also include a special focus on all aspects of Shelby Energy's safety operations and billing and collections function.<sup>5</sup>

The management audit of Shelby Energy initiated under Case No. 2008-00069 will thoroughly investigate Shelby Energy's internal management, including worker safety and billing matters. The Commission finds that these issues are the same that

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<sup>4</sup> Case No. 2008-00069, final Order at 6.

<sup>5</sup> November 10, 2008 RFP at 3.

Stansbury seeks to investigate in this case by way of a management audit. Therefore, to the extent that Stansbury's request for relief has already been addressed by the final Order in Case No. 2008-00069 and the RFP issued on November 10, 2008, Stansbury's request for relief in this case has been rendered moot.

With regard to Stansbury's request to investigate all hiring and termination of Shelby Energy employees for the prior seven years, the Commission's jurisdiction does not extend to the internal personnel decisions made by the utility. While the Commission has jurisdiction over the rates and service of all jurisdictional utilities in Kentucky, the individual hiring and firing decisions made by utilities are not subject to review by the Commission.

Generally, absent a specific contractual provision to the contrary or when the discharge is contrary to a fundamental and well-defined public policy as evidenced by existing law, employment in Kentucky is terminable at will, meaning that an employer can usually fire an employee "for good cause, for no cause, or for a cause that some might view as morally indefensible."<sup>6</sup> Here, there is no statutory authority under which the Commission might assert its jurisdiction to reverse or change any hiring or termination decisions Shelby Energy has made over the past several years. Therefore, there is no legal basis for such an investigation by the Commission.

According to the amended complaint, Stansbury's desire for "a review of all hiring and termination of Shelby Energy employees for the last 7 years" stems from his concern that "[a] large turn-over in Shelby Energy employees has created billing errors

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<sup>6</sup> Miracle v. Bell County Emergency Medical Services, 237 S.W.3d 555, 558 (Ky. App. 2007) (quoting Firestone Textile Co. Div., Firestone Tire and Rubber Co. v. Meadows, 666 S.W.2d 730, 731 (Ky. 1983)).

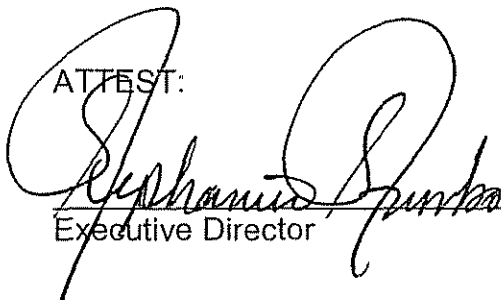
and improperly read meters . . .” and has “increased the cost in training, operation and restoration of service of the utility, increasing potential harm to employees and members due to lack of training and experience.”<sup>7</sup> Pursuant to the RFP, the independent firm which is selected to perform the management audit will examine Shelby Energy’s “Human Resource and Support functions . . . [i]dentify and evaluate Shelby Energy’s Human Resources functions” and will, ultimately, “[d]evelop findings and make appropriate recommendations for specific areas with potential for improvement” and “[w]ork with Shelby Energy to develop action plans and implementation steps to address the recommendations.”

The management audit will indicate whether Shelby Energy’s employees are capable of carrying out their functions in a manner that provides safe, adequate and reliable service at a reasonable cost to its customers. If they are unable to do so, the resulting action plan will indicate what changes or improvements are necessary.

IT IS THEREFORE ORDERED that the August 20, 2008 amended complaint is hereby dismissed without prejudice.

Done at Frankfort, Kentucky, this 11th day of December, 2008.

By the Commission

ATTEST:  
  
Executive Director

<sup>7</sup> Amended complaint at 4.

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