

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

RICKY T. DUNCAN	)	
	)	
COMPLAINANT	)	
	)	
V.	)	CASE NO.
	)	2023-00384
	)	
EAST DAVIESS COUNTY WATER ASSOCIATION, INC.	)	
	)	
DEFENDANT	)	

ORDER

On November 20, 2023, Ricky T. Duncan tendered a formal complaint with the Commission against East Daviess County Water Association, Inc. (East Daviess County Water), alleging that Mr. Duncan should not be responsible for the repair bill sent to him by East Daviess County Water because Mr. Duncan was more than 32 inches away from the water meter base. For the reasons discussed below, the Commission finds that a *prima facie* case has not been established and that Mr. Duncan should be given 20 days to amend the complaint to establish a *prima facie* case or the case should be dismissed.

LEGAL STANDARD

Pursuant to KRS 278.260, the Commission has jurisdiction over complaints regarding rates or service.<sup>1</sup> Commission regulation 807 KAR 5:001, Section 20(1)(c) requires each complaint to state fully, clearly and with reasonable certainty, the act or

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<sup>1</sup> KRS 278.206.

omission, of which failure to comply is alleged.<sup>2</sup> Furthermore, 807 KAR 5:001, Section 20(4)(a), requires the Commission to examine the complaint to ascertain 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.<sup>3</sup> A complaint establishes a *prima facie* case when, on its fact, it states 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, it may be dismissed. However, 807 KAR 5:001, Section 20(4)(a)(1) allows a complainant to amend a complaint within a specified time.<sup>4</sup>

### BACKGROUND

Mr. Duncan's complaint alleged that he was digging a trench to replace a water line on the inside of a fence located at a residence with an address of 8931 Aubrey Road, Maceo, Kentucky 42355. Mr. Duncan claimed he was digging a total distance of 32 inches away from a water meter base when water erupted from inside the water base. Mr. Duncan called East Daviess County Water to report the leak. In response to the phone call from Mr. Duncan, East Daviess County Water repaired the water leak and gave Mr. Duncan a repair bill in the amount of \$916.68 that East Daviess County Water's indicated Mr. Duncan was responsible to pay. Mr. Duncan argued that he be held not responsible to pay the repair bill, "... due to the fact that he was at least 32" away from meter base there was no meter there."<sup>5</sup>

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<sup>2</sup> 807 KAR 5:001, Section 20(4)(c).

<sup>3</sup> 807 KAR 5:001, Section 20(4)(a).

<sup>4</sup> 807 KAR 5:001, Section 20(4)(a)(1).

<sup>5</sup> Complaint (filed Nov. 20, 2023) at 2.

In support of his complaint, Mr. Duncan provided photographs of the property located at 8931 Aubrey Road, Maceo, Kentucky 42355, a copy of the repair invoice in the amount of \$916.68, and a copy of a document from the PSC Consumer Inquiry System with an access date of October 19, 2023.

### DISCUSSION AND FINDINGS

There appears to be three reasons contained within the complaint which Mr. Duncan believed would discharge him from being responsible for paying the water line repair bill. First, Mr. Duncan argued that he should not be responsible for paying the repair bill, "... due to the fact that he was at least 32" away from base there was no meter there."<sup>6</sup> Second, the complainant asserted, "I've never heard of the water co. advise anyone to dig down & cut or disconnect the water line to home before digging [*sic*]."<sup>7</sup> Third, there are several instances within the complaint that reference Mr. Duncan not knowing the location of the water meter base such as, "This meter base had been sitting dormant for 15 plus years & growth covered the area for this time,"<sup>8</sup> and, "I feel as if it had been a very modern up date [*sic*] service not set idle for over 15 years no meter in box not been grown up in bushes for so long this could have very well not have happened."<sup>9</sup>

Mr. Duncan's complaint does not state an act or omission by East Daviess County Water of which failure to comply is alleged. Furthermore, the complaint does not reference a statute, regulation, tariff, or order that East Daviess County Water allegedly

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<sup>6</sup> Complaint, at 2.

<sup>7</sup> Complaint, at 20.

<sup>8</sup> Complaint, at 3.

<sup>9</sup> Complaint, at 7.

violated. It is also unclear, based on the allegations in the complaint, whether the dispute is about charges for or related to Mr. Duncan's water service over which the Commission has jurisdiction, or the dispute relates to a claim for unliquidated damages arising from alleged tortious damage to property over which the Commission would not have jurisdiction.<sup>10</sup> Thus, having reviewed Mr. Duncan's complaint and the evidence submitted, the Commission finds that Mr. Duncan has not fully, clearly and with reasonable certainty stated the act or omission that East Daviess County Water is alleged to have committed as required by 807 KAR 5:001, Section 20(1)(c), nor established a *prima facie* case that the utility has violated a statute, regulation, tariff, or order for which the Commission may grant relief.<sup>11</sup>

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

IT IS THEREFORE ORDERED that:

1. Mr. Duncan's complaint is rejected for filing for failing to state a *prima facie* case.

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<sup>10</sup> See *Carr v. Cincinnati Bell, Inc.*, 651 S.W.2d 126 (Ky. App.1983).

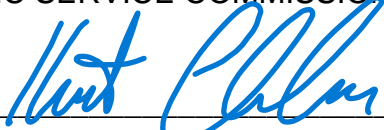
<sup>11</sup> While the Commission is finding that Mr. Duncan failed to establish a *prima facie* case, this Order should not be read as finding that Mr. Duncan is required to pay the amounts claimed by East Daviess County Water. Rather, this Order takes no position regarding whether Mr. Duncan is required to pay the amounts claimed, in part, because it is unclear from the allegations whether the issue is within the Commission's jurisdiction.

2. Mr. Duncan shall have 20 days from the date of service 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. Duncan 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](mailto:PSCED@ky.gov). Mr. Duncan shall include the case number, 2023-00384, in all filings with the Commission. A copy of this Order shall be served upon Mr. Duncan by U.S. mail to 8853 Hwy 2830, Maceo, Kentucky 42355.

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PUBLIC SERVICE COMMISSION

  
\_\_\_\_\_  
Chairman

  
\_\_\_\_\_  
Vice Chairman

  
\_\_\_\_\_  
Commissioner

ENTERED  
MAR 04 2024 bsb  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
\_\_\_\_\_  
Executive Director

Ricky T. Duncan  
8853 Hwy 2830  
Maceo, KENTUCKY 42355

\*East Daviess County Water Association, Inc.  
9210 Highway Route 144  
Knottsville, KY 42366

\*Agnes Johnson  
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