

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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SEP 29 2015

PUBLIC SERVICE
COMMISSION

In the Matter of:

Johnny D. Pennington)
)
)
Complainant)
v.)
)
Kentucky Power Company)
)
)
Defendant)

Case No. 2015-00260

**Kentucky Power Company's Motion To Stay Procedural Schedule
And Motion To Dismiss Complaint,
Or In The Alternative Motion For Summary Judgment**

Kentucky Power Company moves the Public Service Commission of Kentucky to dismiss Mr. Pennington's complaint for failure to prosecute. Alternatively, Kentucky Power Company moves the Commission pursuant to 807 KAR 5:001, Section 9(1) for summary judgment dismissing the complaint. Pending resolution of these two dispositive motions, Kentucky Power respectfully requests that the September 28, 2015 procedural schedule be stayed.

A. Procedural Background And Motion To Stay September 28, 2015
Procedural Schedule.

Mr. Pennington filed his complaint on July 16, 2015. On July 22, 2015, the Commission entered its Order requiring Kentucky Power to satisfy or answer the complaint within ten days. The Company filed its answer on July 29, 2015. On or about August 7, 2015 Staff contacted

counsel for Kentucky Power seeking available dates for an informal conference. The Company provided Staff with dates its representatives would be available for an informal conference. Kentucky Power is informed, on information and belief, that Staff was unable to reach Mr. Pennington to schedule an informal conference in August 2015.

Subsequently, on September 11, 2015, the Executive Director entered and served a written notice of a September 17, 2015 informal conference “to discuss the status of and the issues in this case.” The notice provided that the parties could participate either in person or by telephone.

Representatives of Kentucky Power appeared both in person, along with counsel, and by telephone at the informal conference. Mr. Pennington did not appear at the Commission’s offices, and despite being given multiple opportunities to announce his presence on the conference call, did not appear by telephone.¹ Staff conducted the informal conference by asking questions of Kentucky Power; the informal conference concluded after approximately 30 minutes.

On September 28, 2015 the Commission entered its order establishing a procedural schedule in this case. The order provides for a single, simultaneous round of discovery. The contemplated discovery and any possible hearing would be unnecessary if either of Kentucky Power’s dispositive motions in the alternative is granted. Kentucky Power thus requests the Commission to stay the procedural schedule pending the outcome of these motions. Such a stay is not prejudicial to Mr. Pennington who has taken no steps in this matter, and will save all

¹ See September 24, 2015 Intra-Agency Memorandum of Informal Conference, Case No. 2015-00260 (Ky. P.S.C. Filed September 25, 2015).

parties the unnecessary cost of serving and responding to discovery in the event the motions are granted.

Motion To Dismiss For Failure To Prosecute

The Commission may dismiss a complaint where the complainant fails to comply with a Commission Order or, alternatively, fails to take any steps to prosecute his claims.² Here, Mr. Pennington has taken no action in this case beyond filing his complaint. Although the Company filed its answer to his complaint almost two months ago, Mr. Pennington has yet to challenge the detailed facts set forth by the Company in its answer; nor did he appear at the informal conference convened by Staff, or provide any notice or explanation for his failure to do so. Such a failure hardly is indicative of any intent to prosecute the complaint. Moreover, Mr. Pennington's failure to appear denied Staff and the Company the opportunity to narrow the issues in this case, to set an agreed-upon procedural schedule, and otherwise to expedite the resolution of Mr. Pennington's claims.

Mr. Pennington has evidenced no desire, much less an intent, to prosecute his claims. At a minimum, the Commission should issue an order requiring Mr. Pennington to show cause why his complaint should not be dismissed for his failure to prosecute it.

² *Mr. Bill's Grocery v. Jackson Energy Cooperative Corporation*, Case No. 2014-00194, (Ky. P.S.C. October 2, 2014).

Motion for Summary Judgment

Although not bound by the Kentucky Rules of Civil Procedure, the Commission has the ability to look to the civil rules in the administration of its cases.³ CR 56.03 provides for summary judgment in favor of a defendant where there are no genuine issues of material fact, and the defendant is entitled to judgment as a matter of law.⁴ “In ruling on a motion for summary judgment, the ... [Commission] is required to construe the record ‘in a light most favorable to the party opposing the motion . . . and all doubts are to be resolved in his favor.’”⁵ But Mr. Pennington cannot stand mute as he attempts here: “[a] party opposing a summary judgment motion cannot rely on the hope that the trier of fact will disbelieve the movant's denial of a disputed fact, but must present affirmative evidence in order to defeat a properly supported motion for summary judgment.”⁶

Mr. Pennington’s complaint purports to raise three claims:

(a) Kentucky Power wrongfully required Mr. Pennington to assume financial responsibility for the electric usage by a prior tenant as a condition precedent to establishing service in Mr. Pennington’s name at 736 Hager Branch, East Point, Kentucky;⁷

³ Order, *Craycraft v. Black Mountain Utility District*, Case No. 2015-00038, 2015 Ky. PUC LEXIS 608 at * 11 (Ky. P.S.C. July 2, 2015) (Civil rules provide “persuasive guidance”).

⁴ Although the Commission’s regulations do not explicitly provide for motions to dismiss or motions for summary judgment, 807 KAR 5:001, Section 9(1) provides the Commission may adjudicate a matter without hearing unless a hearing is required by statute or a hearing is determined by the Commission to be necessary for “protection of substantial rights,” or is otherwise required by the public interest. There is no statutory mandate for hearings in complaint cases. Order, *Craycraft v. Black Mountain Utility District*, Case No. 2015-00038, 2015 Ky. PUC LEXIS 761 at ** 11-12 (Ky. P.S.C. August 17, 2015). Moreover, given the absence of genuine issues of material fact, and the fact Kentucky Power is entitled to judgment in its favor even if Mr. Pennington’s factual allegations were determined to be accurate, neither the public interest nor the protection of the substantial rights of the parties requires the Commission to conduct a hearing. As a result, summary judgment is fully consistent with Commission’s procedural regulations.

⁵ *Charles T. Creech, Inc. v. Brown*, 433 S.W.3d 345, 351 (Ky. 2014).

⁶ *Id.*

⁷ Pennington Complaint at 1-2

(b) Notwithstanding his payment record for service at a separate location, Kentucky Power required Mr. Pennington to post a deposit before service would be established in his name at 736 Hager Branch, East Point, Kentucky;⁸ and

(c) The complained of actions took place despite the fact Mr. Pennington claims he is “a heart patient,” has “a pacemaker,” and has “to have elect [*sic*] to run my heart machine.”⁹

As the complainant, Mr. Pennington bears the burden of proof, and is obligated to demonstrate that the actions of the Company to which he objects violate the provisions of Chapter 278 of the Kentucky Revised Statutes, the Commission’s regulations, or Kentucky Power’s tariffs.¹⁰ This he has not done, and cannot do, with respect to any of his three claims. Indeed, construing the record in Mr. Pennington’s favor for purpose of this motion only, there are no genuine issues of material fact, and Kentucky Power is entitled to judgment as a matter of law dismissing Mr. Pennington’s complaint.

1. Kentucky Power Is Entitled To Summary Judgment Dismissing Mr. Pennington’s Claim That His Assumption Of Financial Responsibility For The Unauthorized Electrical Use At 536 Hager Branch, East Point, Kentucky Between December 5, 2014 and February 19, 2015 Was Involuntary.

The facts underlying this matter are set forth in detail in paragraph 2 of the Company’s July 29, 2015 Answer to Mr. Pennington’s complaint and Mr. Rogness’ September 29, 2015 affidavit filed with this motion. Because the answer is not verified, and because Mr. Rogness’ affidavit updates and supplements the answer, this motion is premised on the affidavit. With respect to Mr. Pennington’s first claim, there are no disputes – genuine or otherwise – with respect to the following facts:

⁸ *Id.*

⁹ *Id.* at 2.

¹⁰ See Order, *Craycraft v. Black Mountain Utility District*, Case No. 2015-00038, 2015 Ky. PUC LEXIS 761 at ** 9-10 (Ky. P.S.C. August 17, 2015).

(a) Electric service to 736 Hager Branch, East Point, Kentucky was maintained in the name of John Wayne Fairchild from May 13, 2014 until December 5, 2014.¹¹

(b) On December 4, 2014, Mr. Fairchild requested that service in his name for 736 Hager Branch, East Point, Kentucky be terminated effective December 5, 2014. Kentucky Power terminated Mr. Fairchild's account effective December 5, 2014, but as is its practice, did not physically disconnect service to 736 Hager Branch, East Point, Kentucky.¹²

(c) The Tariff R.S. meter for 736 Hager Branch, East Point, Kentucky was read on January 9, 2015. The meter recorded 4,558 kWh of electrical usage at 736 Hager Branch, East Point, Kentucky subsequent to the December 5, 2014 termination of service to Mr. Fairchild.¹³ Electrical service to 736 Hager Branch, East Point, Kentucky was then physically disconnected at the meter on January 9, 2015.¹⁴

(d) On February 9, 2015 the Tariff R.S. meter for 736 Hager Branch, East Point, Kentucky was again read and Company service personnel discovered that service had been reconnected without authorization of Kentucky Power. An additional 3,848 kWh of usage was recorded on the Tariff R.S. meter at 736 Hager Branch, East Point, Kentucky subsequent to the January 9, 2015 reading and physical disconnection.¹⁵ On February 9, 2015 service to 736 Hager Branch, East Point, Kentucky was physically disconnected for a second time at the meter. In addition, the meter base was locked to prevent further tampering and theft.¹⁶

(e) Between December 5, 2014 and February 9, 2015 there were no authorized customers at 736 Hager Branch, East Point, Kentucky.¹⁷

(f) On February 9, 2015 – the same day service to 736 Hager Branch, East Point, Kentucky was physically disconnected for a second time and the meter based locked to prevent further tampering – a female caller identifying herself as the spouse of John Wayne Fairchild (the former customer at that location) contacted the Company's customer service center seeking information concerning the re-establishment of electrical service to 736 Hager Branch, East Point, Kentucky.¹⁸ The female caller did not place an order for service.¹⁹

¹¹ Affidavit of John A. Rogness III at ¶ 3 (“Rogness Affidavit”).

¹² *Id.* at ¶ 4.

¹³ *Id.* at ¶ 5.

¹⁴ *Id.*

¹⁵ *Id.* at ¶ 6.

¹⁶ *Id.*

¹⁷ *Id.* at ¶ 7.

¹⁸ *Id.* at ¶ 8.

(g) The same day, but subsequent to, the call from the female caller who identified herself as the spouse of Mr. Fairchild, Mr. Pennington called Kentucky Power's customer service center and initiated the process to establish electrical service to 736 Hager Branch, East Point, Kentucky.²⁰

(h) During the course of Mr. Pennington's phone call the customer service representative inquired about the unauthorized electrical usage at 736 Hager Branch, East Point, Kentucky and indicated the Company needed to resolve the identity of the responsible party prior to establishing service.²¹

(i) The statement and inquiry by the customer service representative were consistent with Company practice²² and reasonable in light of the unauthorized usage, the fact that someone twice illegally re-connected electrical service to 736 Hager Branch, East Point, Kentucky between December 5, 2014 and February 9, 2015, and that the calls from the female who identified herself as the spouse of Mr. Fairchild, and from Mr. Pennington, were received the same day as the meter base was locked preventing further efforts at "self-help."²³

(j) Based on Mr. Pennington's representations that he was the "landlord," Kentucky Power did not require, as its practices would have dictated if Mr. Pennington identified himself as a "tenant" at 736 Hager Branch, East Point, Kentucky, that Mr. Pennington produce a photo id. and a copy of his lease for the premises prior to establishing service.²⁴

(k) Electrical service was re-established to 736 Hager Branch, East Point, Kentucky on February 19, 2015 at Mr. Pennington's request and with the payment of the required \$586 deposit.²⁵

(l) A written payment plan for the amounts due for service to 736 Hager Branch, East Point, Kentucky was established at Mr. Pennington's request

¹⁹ *Id.*

²⁰ *Id.* at ¶ 9.

²¹ *Id.* at ¶ 10. Although Mr. Pennington has not disputed this fact, he nevertheless claims he was required to assume financial liability for the unauthorized service. Even accepting Mr. Pennington's unsupported claim as true for the purposes of this motion only, Kentucky Power is entitled to judgment in its favor in light of Mr. Pennington's subsequent ratification of the agreement to assume financial responsibility for the unauthorized usage at 736 Hager Branch, East Point, Kentucky. *See infra.*

²² *Id.* at ¶ 11.

²³ *Id.*

²⁴ *Id.* at ¶ 12. Mr. Rogness' affidavit further provides that "[a]t no time did the customer service representative or the Company require Mr. Pennington to assume financial responsibility for the unauthorized service as a condition precedent to his receiving electrical service at 736 Hager Branch, East Point, Kentucky." *Id.* Mr. Pennington's unverified complaint is to the contrary. As explained below, Kentucky Power is still entitled to summary judgment even if Mr. Pennington ultimately comes forward with affirmative evidence sufficient to create a genuine issue of material fact with respect to this issue.

²⁵ *Id.* at ¶ 13.

on April 23, 2015.²⁶ A copy of the written payment plan agreed to by Mr. Pennington is attached to Mr. Rogness' affidavit as **EXHIBIT 1**. The payment plan was in the total amount of \$1,490.11 and required six monthly payments.²⁷ The payment plan included charges for service rendered to 736 Hager Branch, East Point, Kentucky for the period December 5, 2014 through April 23, 2015 and hence included the amounts he now disputes.²⁸

(m) In establishing the payment plan, Mr. Pennington did not dispute his liability for charges for electrical service to 736 Hager Branch, East Point, Kentucky during the period December 5, 2014 through April 14, 2015.²⁹

(n) Mr. Pennington on May 5, 2015 made his only payment under the payment plan. The payment plan terminated by its terms on May 22, 2015 when Mr. Pennington failed to make the second required payment under the plan.³⁰

(o) Charges for the unauthorized electrical service to 736 Hager Branch, East Point, Kentucky between December 5, 2014 and February 5, 2015 totaled \$761.13.³¹ This is the amount for which Mr. Pennington now disputes legal responsibility.³²

(p) Mr. Pennington does not dispute legal responsibility for electrical service and associated charges for the period between February 19, 2015 (when the account was established in his name and service commenced) and July 27, 2015 (when service was terminated for non-payment).³³ Undisputed charges associated with that period were:³⁴

Billing Cycle	Type of Charge	Amount
February 5, 2015 ³⁵ through March 6, 2015	Electrical Service	\$463.91
March 6, 2015 through April 6,	Electrical Service	\$233.11

²⁶ *Id.* at ¶ 15.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at ¶ 16.

³⁰ *Id.* at ¶ 17.

³¹ *Id.* at ¶ 18.

³² *Id.*

³³ *Id.* at ¶ 19.

³⁴ *Id.*

³⁵ Electrical service was re-established February 19, 2015. Because the meter base was locked there was no service and hence no charges between February 5, 2015 and February 19, 2015.

Billing Cycle	Type of Charge	Amount
2015		
March 6, 2015 through April 6, 2015	Late Payment Charge	\$31.96
April 6, 2015 through May 5, 2015	Electrical Service	\$117.78
May 5, 2015 through June 5, 2015	Electrical Service	\$85.49
May 5, 2015 through June 5, 2015	Late Payment Charge	\$5.89
June 5, 2015 through July 6, 2015	Electrical Service	\$148.87
June 5, 2015 through July 6, 2015	Late Payment Charge	\$4.28
July 6, 2015 through July 27, 2015	Electrical Service	\$99.40
July 6, 2015 through July 27, 2015	On-Premises (Disconnect) Charge	\$13.00
Total		\$1203.69

(q) During the period February 5, 2015 through July 27, 2015 the following payments and other credits were posted to Mr. Pennington's account.³⁶

Date	Type of Credit	Amount
May 05, 2015	Payment	\$250.00
July 14, 2015	Payment	\$117.78
August 19, 2015	Deposit applied to account	\$586.00
August 19, 2015	Interest on deposit credited to account	\$0.32
Total		\$954.10

(r) The undisputed amount still owed by Mr. Pennington for electrical service to 736 Hager Branch, East Point, Kentucky, after netting all payments and other credits due, is \$249.59 (\$1203.69 - \$954.10).³⁷ The total amount owed by

³⁶ *Id.* at ¶ 20.

³⁷ *Id.* at ¶ 21. The Company's normal business practice, and upon information and belief, the practice of most businesses, is to apply all credits to the oldest outstanding charges. *Id.* For purposes of this motion only, all payments and charges have been applied to the undisputed amounts due for service from February 19, 2015 through July 27, 2015 and not the oldest charges. In doing so, Kentucky Power does not waive its right to follow its normal practice with Mr. Pennington or its other customers.

Mr. Pennington for electrical service to 736 Hager Branch, East Point, Kentucky, including the \$761.13 he disputes, is \$1010.72.³⁸

(s) After due notice, Kentucky Power terminated electrical service to 736 Hager Branch, East Point, Kentucky on July 27, 2015 for nonpayment of bills.³⁹ Kentucky Power subsequently rendered a final bill.⁴⁰ The termination was in accordance with the Company's tariffs and the Commission's regulations.⁴¹

(t) Beginning on or about February 28, 2011 through the date of this motion, Mr. Pennington maintained residential electrical service in his name for a residence located at 875 Buffalo Road, Meally, Kentucky.⁴² As of September 25, 2015 Mr. Pennington's 875 Buffalo Road, Meally, Kentucky account was approximately 30 days delinquent.⁴³

(u) On or about September 17, 2015 Mr. Pennington applied for residential service at a third location: 875 Buffalo Road, Building 1, Meally, Kentucky.⁴⁴ Mr. Pennington indicated the new service location would be occupied intermittently.⁴⁵

(v) As of the date of this filing, Mr. Pennington has not presented to Kentucky Power the medical certificate required by 807 KAR 5:006, Sections 15 and 16 with respect to his claimed infirmities.⁴⁶

Mr. Pennington alleges in his unverified complaint that "AEP is trying to make me pay the prior resident's bill before ...[it would] agree to hook up my power...."⁴⁷ But in light of Mr. Rogness' affidavit, Mr. Pennington must do more to than simply make that claim. He is required to come forward with affirmative evidence⁴⁸ sufficient to create a genuine issue of material fact

³⁸ *Id.*

³⁹ *Id.* at ¶ 22.

⁴⁰ *Id.* A copy of Mr. Pennington's final bill for service at 736 Hager Branch, East Point, Kentucky is attached as EXHIBIT 2 to Mr. Rogness' affidavit.

⁴¹ *Id.*

⁴² *Id.* at ¶ 23.

⁴³ *Id.*

⁴⁴ *Id.* at ¶ 24.

⁴⁵ *Id.*

⁴⁶ *Id.* at 25.

⁴⁷ Pennington Complaint at 1.

⁴⁸ *Charles T. Creech, Inc. v. Brown*, 433 S.W.3d 345, 351 (Ky. 2014).

concerning the claimed involuntary nature of his decision to assume financial responsibility for the unauthorized service at 736 Hager Branch, East Point, Kentucky. In doing so, he must in particular controvert the following undisputed facts:

➤ Mr. Pennington informed the Company's customer service representative on February 9, 2015 that he was the "landlord" for 736 Hager Branch, East Point, Kentucky and that he agreed to assume financial responsibility for the unauthorized following the termination of service to Mr. Fairchild on December 5, 2014.⁴⁹

➤ Mr. Pennington simultaneously maintained residential service at 875 Buffalo Road, Meally, Kentucky during the entire period service also was maintained in his name at 736 Hager Branch, East Point, Kentucky.⁵⁰

➤ Two months after he claims he was required to assume legal responsibility for the past unauthorized residential service to 736 Hager Branch, East Point, Kentucky, Mr. Pennington entered into the April 24, 2015 payment plan that included \$761.13 in charges he now disputes.⁵¹

➤ Mr. Pennington did not contact the Commission at the time he claims the Company required that he assume legal responsibility for the past unauthorized residential service to 736 Hager Branch, East Point, Kentucky.

➤ Mr. Pennington maintained residential service at 736 Hager Branch, East Point, Kentucky without complaining to the Commission for approximately four months after he allegedly was required to assume legal responsibility for the past unauthorized residential service to 736 Hager Branch, East Point, Kentucky.

➤ Mr. Pennington filed this complaint with the Commission only after breaching his payment plan with the Company.⁵²

These undisputed facts lead to but a single conclusion: Mr. Pennington voluntarily assumed financial responsibility for the previous unauthorized usage at 736 Hager Branch Road, East Point, Kentucky, and that he repented of his decision only after amassing \$658.18 in unpaid charges he still does not dispute.

⁴⁹ Rogness Affidavit at ¶ 10.

⁵⁰ *Id.* at ¶ 23.

⁵¹ *Id.* at ¶¶ 15-16.

⁵² *Id.* at ¶ 17

Even if the Commission were to conclude that a genuine issue of material fact exists as to the voluntary nature of Mr. Pennington's February 9, 2015 initial agreement to assume financial responsibility for the unauthorized service at 736 Hager Branch, East Point, Kentucky, Mr. Pennington ratified that initial agreement to assume financial responsibility by his subsequent acceptance of the benefits of the allegedly coerced agreement for nearly four months,⁵³ coupled with his request for the April 24, 2015 written payment plan.⁵⁴ Such ratification renders Mr. Pennington liable for the unauthorized service as a matter of law notwithstanding his unverified claims of duress.⁵⁵

Kentucky Power is entitled to summary judgment dismissing Mr. Pennington's claim with respect to his voluntary assumption of financial responsibility for the unauthorized electrical service to 736 Hager Branch, East Point, Kentucky.

2. Kentucky Power Acted Lawfully In Requiring That Mr. Pennington Provide A Deposit Prior To Establishing Service At 736 Hager Branch, East Point, Kentucky.

Both the Commission's regulations, and Kentucky Power's tariffs, vested Kentucky Power with the authority to require a separate deposit from Mr. Pennington prior to establishing service at 736 Hager Branch, East Point, Kentucky. 807 KAR 5:006, Section 8 provides in pertinent part:

⁵³ *Id.* at ¶ 19.

⁵⁴ *See Baker v. Shapero*, 203 S.W.3d 697, 700 (Ky. 2006) (defendant's subsequent actions abrogated any lack of mutuality of agreement even if defendant lacked capacity to enter into contract to employ attorney at the time the agreement was executed).

⁵⁵ *See Hofgesang v. Silver*, 23 S.W.2d 945, 947 (Ky. 1930) ("a party from whom a contract has been wrung by duress must disclaim on the recovery of freedom, and subsequent recognition of the contract is the equivalent of ratification.")

(1)(a) A utility may require from a customer a minimum cash deposit or other guaranty to secure payment of bills....⁵⁶

...

(5) a utility may refuse or discontinue service to a customer to a customer pursuant to Section 15 of this administrative regulation if payment of requested deposits is not made.

Nothing in the Commission's regulation permits Mr. Pennington to avoid posting a deposit prior to establishing service at a second location based upon his payment history at a separate location.

The Company's tariffs likewise provide Mr. Pennington with no succor:

Prior to providing service or at any time thereafter, the Company may require a cash deposit or other guaranty acceptable to the Company to secure payment of bills, except for customers qualifying for service reconnection pursuant to 807 KAR 5:006, Section 16, Winter Hardship Reconnection. Service may be refused for failure to pay the requested deposit.⁵⁷

The Company's tariff – like the Commission's regulation – vests the Company with the right to require a deposit for service at a new location without regard to a customer's payment history at a separate location. In fact, the Commission's regulations provide that the Company may waive a deposit requirement only in conformity with the criteria set out in the Company's tariffs.⁵⁸

Mr. Pennington's belief that his payment record for the service provided to him at 875 Buffalo Road, Meally, Kentucky⁵⁹ entitles him to obtain service at the Hager Road location without posting a deposit finds no support in the Commission's regulations, the Company's tariffs, or his subsequent payment record in connection with the service provided him at 736 Hager Branch Road, East Point, Kentucky.

⁵⁶ The regulation provides an exception to the deposit requirement in the case of winter hardship reconnections. The exception is inapplicable on its face as Mr. Pennington does not allege, nor could he, that he was seeking to reconnect his prior service at 736 Hager Branch Road, East Point, Kentucky. See 807 KAR 5:006, Section 16.

⁵⁷ Tariff Sheet 2-2 at ¶ 4 (Terms and Conditions of Service).

⁵⁸ 807 KAR 5:006, Section 8(2).

⁵⁹ Mr. Pennington's account for 875 Buffalo Trace, Meally, Kentucky became delinquent subsequent to the filing of Kentucky Power's answer. Rogness Affidavit at ¶ 23.

3. Mr. Pennington's Physical Infirmities Are Irrelevant.

Mr. Pennington also alleges "I am a heart patient[.] I have a pace maker and have to have elect [*sic*] to run my heart machine." As regrettable as Mr. Pennington's infirmities are, they do not serve as a basis for his requested relief. Although the Commission's regulations recognize that a customer's health problems, if properly certified, may permit a customer to obtain reconnection or avoid termination of service,⁶⁰ none apply to the establishment of new service. Moreover, even if the regulations otherwise were applicable, all require that the customer provide a certificate from the Cabinet for Health and Family Services. Mr. Pennington has never presented a medical certificate to the Company,⁶¹ and thus his claim is without merit.

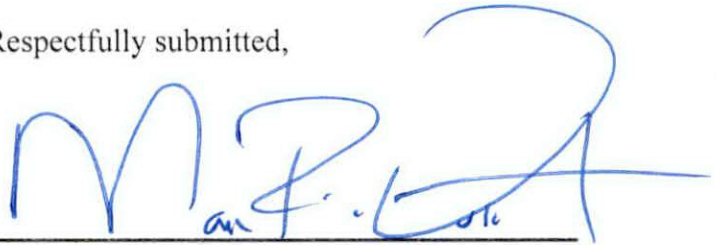
WHEREFORE, Kentucky Power Company respectfully requests the Commission to enter an Order:

1. Staying the September 28, 2015 procedural schedule in this matter pending the resolution of the Company's dispositive motions;
2. dismissing Mr. Pennington's complaint with prejudice for lack of prosecution; or, in the alternative, requiring him to show cause why it should not be dismissed for failure to prosecute;
3. Granting summary judgment dismissing Mr. Pennington's complaint; and
4. Granting Kentucky Power all further relief to which it may be entitled.

⁶⁰ See 807 KAR 5:006, Section 15; *id.* at Section 16.

⁶¹ Rogness Affidavit at ¶ 25.

Respectfully submitted,



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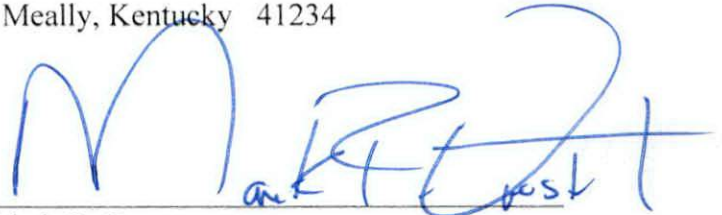
COUNSEL FOR KENTUCKY POWER
COMPANY

Certificate of Service

I hereby certify that a copy of the foregoing answer was mailed United States First Class Mail, postage prepaid, this 29th day of September, 2015 to:

Johnny D. Pennington
736 Hager Branch
East Point, Kentucky 41216

Johnny D. Pennington
875 Buffalo Road
Meally, Kentucky 41234



Mark R. Overstreet