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PUBLIC SERVICE
COMMISSION

In the Matter of:

[illegible]

Case No.

2015-00417

COMPLAINANTS

V.

KENTUCKY UTILITIES COMPANY**DEFENDANT**

Comes now Complainants, David Shouse and Brian Shouse, d/b/a Shouse Farms, and Bryan Hendrickson, d/b/a Hendrickson Grain and Livestock, LLP, by counsel, and in response to Defendant's Motion to Dismiss for failure to state a claim upon which relief can be granted, would state as follows:

1. The Motion to Dismiss contends the Verified Complaint does not sufficiently state a claim. Complainants contend otherwise. Under the Civil

Rules, the Court/adjudicating agency must accept the allegations of the Verified Complaint as true. *McBrenty v. Ky. Comm. and Technical College System*, 262 S.W.3d 205, 211 (Ky. Ct.App., 2008). The decision maker must, therefore, construe the allegations in the Verified Complaint in a light most favorable to the opposing party, which in this instance, would be the Complainants. Moreover, a Motion to Dismiss for the failure to state a claim should not be granted unless the pleading party could not prove any set of facts that would entitle the party to relief. *Wood v. Wyeth-Ayerst Lab, Div. of American Home Products*, 82 S.W.3 849, 851 (Ky., 2002). Complainants submit if the allegations in the Verified Complaint are to be accepted as true, which they must, then a claim has been adequately made contending the rate charges are unfair, unjust, and/or unreasonable, bringing the matter within the purview of the PSC (KRS 278.170, 278.260 and KRS 278.270).

2. Complainants have made sufficient allegations, relating to the charges for their agricultural corn drying operation concerning the actual use of electricity, how the particular rate is calculated, whether or not the rate includes expenses paid for by Complainants, whether Defendant is

receiving the credit in its formula, and that the rate being charged is, and would be unfair, unreasonable and/or unjust under these facts.

3. Defendant, in its Motion to Dismiss, admits to the allegations in the Verified Complaint. Therefore, Complainants' contention they paid the expenses for the installation of the electrical service must be accepted as true. In other words, all the lines, etc., that were run for purposes of providing electric service to Complainants' agricultural operations were paid for by the Complainants. Any formula utilizing the costs of installation as being credited to the Defendant would be unfair, unreasonable, and/or unjust, if not plainly illegal.

4. Simply put, the grain drying operations are seasonal in nature and at most, operate on a two to three month basis per year. As a practical matter, only 16-1/2 – 25 percent of the time do Complainants have actual electrical use. The remaining 75-83-1/2 percent of the time they are paying for something they are not receiving or using. The circumstances are patently unfair. This scrivener can think of no other scenario where a consumer pays 75-83-1/2 percent of the time for something not used or not received by the consumer.

5. The calculation for the electric use is believed to include a charge where Defendant recovers the cost of installation, which has been paid for by Complainants. Case law seems to support the proposition that the statutory standard for the determination of what is just and reasonable is based upon the result reached and not the method employed. It is the result that is controlling. It is the impact of rate order that counts. *Natl. Southwire Alum. v. Big Rivers Electric*, 785 S.W.2d 503, 512 (Ky. Ct. App. 1990). Here, the result is clearly unfair under the circumstances. The demand rate charge on a known seasonal use unquestionably results in an unfair, unjust, and unreasonable rate, especially when the allegations in the Verified Complaint are required to be accepted as true.

6. KRS 278.170, permits review of discrimination concerning rates or services. The Commission determines questions of fact and any questions of fact that may have been previously disputed are now admitted or must be accepted as true.

7. KRS 278.030(1) authorizes a utility to collect only "fair, just and reasonable rates". According to statute, the PSC is authorized to hear complaints of the consumer as to whether or not the rate being complained of is fair, just, and reasonable, as here (KRS 278.260(3)).

8. It remains within the purview of the Public Service Commission under KRS 278.270, to prescribe that which is a fair, just, and reasonable rate. The PSC, according to statute, when it finds rates to be unfair, unjust, unreasonable or discriminatory as Complainants contend, the rates are to be adjusted accordingly. This is the very purpose for which the PSC exists and the only recourse the Complainants have according to the statutes.

9. It cannot reasonably be stated that the present rate charges for the grain bin drying operations are fair, just, and/or reasonable. Based on the fact there are only two to three months of use by the consumer, the payment for the actual use of two to three months, coupled with a 50 percent rate for the remainder of the non-use year that may include a charge for cost recovery, is indeed a windfall for Defendant. It cannot reasonably be stated that these circumstances constitute a fair, just, and reasonable rate based upon the evidence now before the Public Service Commission.

10. It should be noted Complainants seek any other permissible relief as well, which is generally interpreted to mean anything within the

statutory or regulatory framework that may be applicable to these circumstances.

11. With respect to the filed rate doctrine argument Complainants contend that unjust, unfair, unreasonable and/or discriminatory rates are always subject to review (KRS 278.170; 278.260; and 278.270). With respect to collateral estoppel, the same statutes would seem to remain applicable. Otherwise, a once presumably fair rate could not be reviewed when it became unfair. To allow for the correction of an unjust, unfair, or unreasonable rate by the PSC is authorized by statute. Unquestionably, the Complainants are being treated differently (KRS 278.170)

For these few reasons, Complainants request that the Motion to Dismiss be overruled; and for any and all other relief unto which the Complainants may be entitled.

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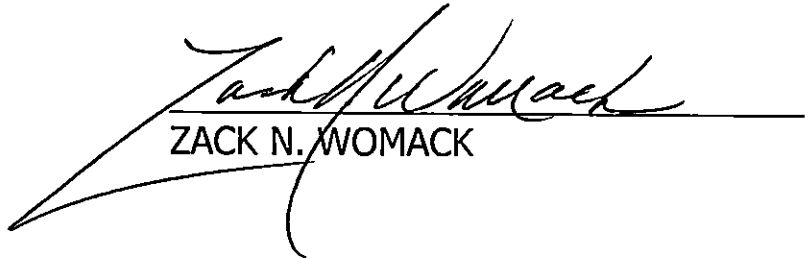
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By


Zack N. Womack

CERTIFICATE OF SERVICE

It is hereby certified that the original of the foregoing has been served upon the Public Service Commission; a true copy of the foregoing has been served upon Honorable Allyson K. Sturgeon, Senior Corporate Attorney, and Honorable Sara Veeneman, Corporate Attorney, LG&E and KYU Energy LLC, 220 West Main Street, Louisville, Kentucky 40202, attorneys for Defendant, on this the 8 day of January, 2016.


ZACK N. WOMACK