

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

NANCY A. STADTLANDER)	
)	CASE NO.
VS.)	2016-00187
)	
KENERGY CORP.)	

ORDER

This matter arises on an Amended Complaint tendered by Nancy A. Stadlander (“Ms. Stadlander”) with the Commission. On May 10, 2016, Ms. Stadlander tendered a formal complaint (“Complaint”) that alleged violations of trespass, environmental, and nuisance laws arising from an advanced metering infrastructure (“AMI”) meter installed by Kenergy Corp. (“Kenergy”). By Order entered July 12, 2016 (“July 12, 2016 Order”), the Commission found that Ms. Stadlander had failed to establish a *prima facie* case and provided her the opportunity to amend her Complaint. On July 25, 2016, Ms. Stadlander tendered the Amended Complaint, along with a motion to schedule a hearing and a motion requesting that the instant proceeding be continued so that Ms. Stadlander could gather additional information to support her Amended Complaint. The Commission granted the motion to continue, and on November 23, 2016, Ms. Stadlander submitted documents in support of her claim.

Having reviewed the evidence of record, the Commission finds that Ms. Stadlander failed to establish a *prima facie* case in the Amended Complaint, and thus

this matter should be dismissed. The Commission further finds that Ms. Stadlander's motion for a hearing should be denied as moot.

PROCEDURAL BACKGROUND

In her May 10, 2016 Complaint, Ms. Stadlander alleged that Kenergy's installation of the AMI meter violated trespass laws, and that the AMI meter emitted noise and radiation that violated the United States Environmental Protection Agency ("EPA") regulations and nuisance laws.

In the July 12, 2016 Order, the Commission found that Ms. Stadlander's Complaint failed to establish a *prima facie* case. The Commission noted that it authorized Kenergy to purchase and install AMI meters in a previous case.¹ The Commission found that Kenergy's tariff and 807 KAR 5:006, Section 20, gave Kenergy the express right to access a meter Kenergy owns that is located on a customer's premises for the purpose of installing, replacing, or removing said meter. Thus, Kenergy did not violate a statute, regulation, or tariff that the Commission enforces when Kenergy installed the AMI meter on the Stadlander property. The Commission further found that it did not have statutory authority to enforce criminal trespassing or nuisance laws, or EPA regulations, because criminal laws and EPA regulations fall outside the scope of the Commission's statutory authority to adjudicate complaints regarding a utility's rates and service, and to enforce the provisions of KRS Chapter 278. Pursuant to 807 KAR 5:001, Section 20(4)(a)(1), Ms. Stadlander was provided the opportunity to amend her Complaint to establish a *prima facie* case.

¹ Case No. 2014-00376, *Application of Kenergy Corp. for an Order Issuing a Certificate of Convenience and Necessity to Install an Automated Metering and Infrastructure System* (Ky. PSC Feb. 24, 2015) final Order at 5–6.

On July 25, 2016, Ms. Stadlander tendered an Amended Complaint, along with a motion to continue the matter to permit her additional time to gather evidence and a motion to schedule a hearing. In the Amended Complaint, Ms. Stadlander raised the claim that Kenergy provided electric service in an unsafe manner by operating an electric power line that purportedly emitted radio frequency (“RF”) signals and an AMI meter that purportedly emitted RF signals, both of which allegedly caused adverse health impacts to Ms. Stadlander.

By Order entered August 24, 2016, the Commission granted Ms. Stadlander’s motion to continue and the case was held in abeyance until October 24, 2016. On October 12, 2016, Ms. Stadlander filed a second request to continue this matter to permit her time to gather evidence to support her claims. By Order entered October 17, 2016, the Commission granted a second and final extension, and held the case in abeyance until November 25, 2016.

On November 23, 2016, Ms. Stadlander tendered a letter and several hundred pages of documents to support her claim.

DISCUSSION

Legal Standard

Pursuant to 807 KAR 5:001, Section 20(1)(c), each complaint must state with “reasonable certainty” the act or omission that is the subject matter of the complaint. Further, 807 KAR 5:001, Section 20(4)(a), requires the Commission to determine whether a complaint establishes a *prima facie* case. A complaint establishes a *prima facie* case when, on its face, it states sufficient allegations that, if uncontroverted by other evidence, would entitle the complainant to the relief requested.

Amended Complaint

In her Amended Complaint, Ms. Stadlander alleged that that Kenergy violated KRS 278.030(2) and 807 KAR 5:041, Section 2, by operating a power line and an AMI meter that purportedly emitted RF, which Ms. Stadlander alleged caused her physical and emotional harm. Ms. Stadlander did not provide any documents with the Amended Complaint. Instead, Ms. Stadlander requested and was given an extension of time to gather documents to support her claims.

On November 23, 2016, Ms. Stadlander filed a letter reiterating her belief that smart meters cause physical harm and death, but did not raise additional claims. Ms. Stadlander proffered voluminous documents that purport to support claims raised in the Amended Complaint. The majority of documents contain generalized information unrelated to a power line or AMI meter operated by Kenergy, and thus are largely irrelevant to this proceeding. This includes portions of a 1972 bibliography of RF-related literature;² a letter requesting that a federal agency establish exposure limits for RF from cell phones, cell towers, computers, microwaves, and wireless devices;³ an article on “structure-borne noise” from residential sources, such as heat pumps and refrigerators, that did not mention power lines or AMI meters;⁴ a “layman” explanation of the Smart Grid written by a self-described opponent of the Smart Grid;⁵ and legislation proposed by a self-described opponent to smart meters.⁶

² Nancy Stadlander’s Other Information (filed Nov. 23, 2016), Exhibit 2.

³ *Id.*, Exhibit 5.

⁴ *Id.*, Exhibit 8.

⁵ *Id.*, Exhibit 11.

⁶ *Id.*, Exhibit 13.

The few documents that appear to be individualized to Ms. Stadtklander, and thus relevant to this proceeding, do not provide evidence that Kenergy performed an improper act or omission that violated any statute, regulation, or tariff the Commission is charged with enforcing. For example, Exhibit 1 is a brief letter from an endocrinologist, that states the results of tests performed on Ms. Stadtklander were normal, and then surmises that Ms. Stadtklander has sensitivity to electro-magnetic field radiation (“EMF”), based not on a controlled study that established a correlation between Ms. Stadtklander’s symptoms and EMF exposure from a power line or AMI meter, but instead based on a subjective report from Ms. Stadtklander that “[h]er symptoms get better” when she is in an area “free of smart meters.”⁷ The endocrinologist ends the letter by advocating for EMF exposure limits.⁸ Similarly, Exhibits 6 and 7 are labelled as noise pollution studies, presumably from the Stadtklander residence, but the documents do not include any context, such as how, where, when, and under what conditions the alleged studies were conducted, or provide any indication to support a conclusion that Kenergy violated any laws.

FINDINGS

Based on the evidence of record and being otherwise sufficiently advised, the Commission finds that Ms. Stadtklander failed to produce evidence that Kenergy performed an improper act or omission that violated KRS 278.030(2) or 807 KAR 5:041, Section 2. The Commission further finds that the Amended Complaint should be dismissed for failure to establish a *prima facie* case and that the motion for a hearing should be dismissed as moot.

⁷ *Id.*, Exhibit 1.

⁸ *Id.*

KRS 278.030(2) requires every utility to provide adequate, efficient, and reasonable service. 807 KAR 5:041, Section 2, requires an electric utility to furnish adequate service and facilities in accordance with Commission regulations and “in such manner as to obviate undesirable effects upon. . . its customers.”

In regards to the AMI meter, Ms. Stadlander attempted to relitigate an issue that the Commission has already examined and decided on the merits. In previous cases, the Commission has held that AMI meters are “necessary to provide adequate, reliable service” and thus are in keeping with proper utility service to customers.⁹ Further, the Commission took health concerns into consideration, along with other factors, when it declined to require customer opt-outs in the deployment of AMI meters, but instead deemed the decision of whether to offer customer opt-outs to be within utility discretion and business judgment.¹⁰ Here, Ms. Stadlander failed to produce any documents to support her claim regarding the AMI meter. Instead, Ms. Stadlander offered only her unsubstantiated belief that the AMI meter on her property emitted RF and that the RF caused adverse health impacts to Ms. Stadlander. An unsubstantiated allegation is not evidence and does not establish a *prima facie* case.

Similarly, Ms. Stadlander failed to produce evidence to support her claim that a power line emitted RF and that the RF emitted by the power line has caused Ms. Stadlander physical and emotional harm. Despite having been granted additional time, Ms. Stadlander has not produced any evidence that Kenergy failed to provide adequate, efficient, and reasonable service, or that the power line near her residence is

⁹ Case No. 2014-00376, *Application of Kenergy Corp.*, final Order at 5–6.

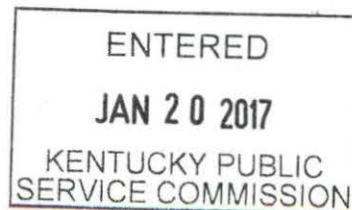
¹⁰ Case No. 2012-00428, *Consideration of the Implementation of Smart Grid and Smart Meter Technologies* (Ky. PSC Apr. 13, 2016) final Order at 17.

in disrepair, or that the power line failed to meet applicable Commission standards. As with her AMI claim, Ms. Stadlander offered as “evidence” only her unsubstantiated belief, which is not evidence and does not establish a *prima facie* case. Further, Ms. Stadlander failed to state her power-line claim “with reasonable certainty” as required by 807 KAR 5:001, Section 20(1)(c). Ms. Stadlander failed to identify the location of the power line, other than “nearby” her residence, and she failed to identify the type of power line at issue. It is unclear whether Ms. Stadlander is referencing the service drop that runs to her residence, a distribution line, or a transmission line. Additionally, Ms. Stadlander failed to produce any evidence to support the conclusion that the power line at issue is an electric utility line. The lack of specificity is sufficient to support a finding that Ms. Stadlander failed to state her claim with reasonable certainty, and thus the power line claim should be dismissed.

IT IS THEREFORE ORDERED that:

1. Ms. Stadlander’s Amended Complaint is dismissed.
2. Ms. Stadlander’s motion for a hearing is denied as moot.
3. This case is closed and removed from the Commission’s docket.

By the Commission



ATTEST:


Executive Director

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