

he learned electric service had been on illegally. Mr. Spainhoward claims that Kenergy required him to pay charges for tampering or Kenergy would not turn the power on. Mr. Spainhoward asks for a refund of \$328.18 (\$295.18 plus \$33.00), which resulted from the alleged illegal tampering and a service charge for turning the power on.

Based on a review of the Complaint, Kenergy's Response to the Complaint ("Answer"), and additional statement from Mr. Spainhoward, and being otherwise sufficiently advised, the Commission finds that Mr. Spainhoward has not presented a *prima facie* case.

Commission regulation 807 KAR 5:001, Section 20(1)(c), requires that a formal complaint must state:

Fully, clearly, and with reasonable certainty, the act or omission, of which complaint is made, with a reference, if practicable, to the law, order, or administrative regulation, of which a failure to comply is alleged, and other matters, or facts, if any, as necessary to acquaint the commission fully with the details of the alleged failure.

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. The party filing a complaint has the burden of proving his claim.

Under 807 KAR 5:001, Section 20(4)(1)(a), if a determination is made that the complaint fails to establish a *prima facie* case, the complainant must be provided the opportunity to amend the complaint within a specified time. If the complaint is not timely amended to set forth a *prima facie* case, the complaint is dismissed.

Here, Mr. Spainhoward failed to provide evidence that his charges resulted from an improper act, or omission, on the part of Kenergy. Mr. Spainhoward, therefore, fails to establish a *prima facie* case.

The Complaint alleges that Mr. Spainhoward believed the Kenergy bill to be in the previous property owner's name and includes several random details about a person identified as William Brown. Kenergy provided the bills to the address at issue for 2017, and documents that the power at the location was disconnected for non-payment in March 2017, and it was not restored.² Mr. Spainhoward and his wife purchased the property on June 9, 2017. Kenergy provided an explanation, as well as documentation that shows the meter at the property registered power flowing from 8:00 p.m. until 6:00 a.m. on June 11, 2017, at which time the meter was pulled and the boots were re-installed.³ The record shows the meter was tampered with again to allow unauthorized use on June 11, 2017, between 1:00 p.m. and 2:00 p.m., and then again on June 12, 2017, at 6:45 a.m. Finally, the meter was disconnected and removed by Kenergy on June 12, 2017, at 9:21 a.m.

There are discrepancies between the allegations in the Complaint and the Answer provided by Kenergy regarding the date upon which Mr. Spainhoward's son requested service. However, the discrepancy as to whether Mr. Spainhoward's son contacted Kenergy on June 12, 2017, or June 13, 2017, is irrelevant based upon the evidence of tampering that occurred after the Deed had been entered showing that Mr. Spainhoward

² Kenergy Answer at page 1, paragraph 2.

³ *Id.* at page 2, paragraph 4.

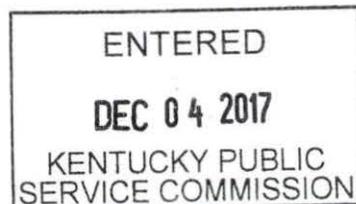
and his wife owned the property on June 9, 2017. The facts show that Kenergy acted properly pursuant to its tariff when Kenergy billed for payment charges to Mr. Spainhoward for illegal tampering and/or theft of service.⁴ Kenergy was within its rights to bill for payment charges to the property owners, Mr. and Mrs. Spainhoward.

The Commission finds that the Complaint does not state a *prima facie* case.

IT IS THEREFORE ORDERED that:

1. Mr. Spainhoward's Complaint is rejected for failing to conform to the requirements of 807 KAR 5:001, Section 20(1)(c), and for failing to state a *prima facie* case.
2. Mr. Spainhoward shall have 14 days from the date 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. If Mr. Spainhoward does not file an amended complaint within 14 days of the date of this Order, his complaint shall be dismissed without prejudice.

By the Commission



ATTEST:


Executive Director

⁴ Kenergy Corporation, Tariff Sheet 154

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