

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

FREDDIE J. COLEMAN)	
)	
COMPLAINANT)	
)	
V.)	CASE NO.
)	2018-00297
KENTUCKY POWER COMPANY)	
)	
DEFENDANT)	

ORDER

On August 17, 2018, Freddie J. Coleman (Mr. Coleman) tendered a complaint against Kentucky Power Company (Kentucky Power) requesting that the Commission conduct a management audit of Kentucky Power as a remedy for, as Mr. Coleman asserted, increased rates charged by Kentucky Power that place a significant financial burden on Kentucky Power’s customers. Mr. Coleman argued that Kentucky Power should provide customers with electric service “as cheap as possible.” Mr. Coleman entreated the Commission to conduct a management audit to ensure that Kentucky Power is operating efficiently and “as cheap as possible with no waste.” Mr. Coleman filed four exhibits with his complaint: (1) a petition requesting a management audit; (2) two press releases issued in 2015 concerning a Commission order¹ requiring Kentucky Power to refund \$13.2 million to its customers and disallowing future collection of certain

¹ Case No. 2014-00225, *An Examination of the Application of the Fuel Adjustment Clause of Kentucky Power Company from November 1, 2013 through April 30, 2014* (Ky. PSC Jan. 22, 2015).

costs; (3) the Commission's January 18, 2017 Order in Case No. 2016-00073² investigating the accuracy of Kentucky Power's fuel adjustment clause (FAC) filings; and (4) documents from a case where a company withdrew its complaint against Kentucky Power the day after Kentucky Power was ordered to answer the complaint.³

The Attorney General of the Commonwealth of Kentucky (Attorney General) filed a public comment that discussed the economic conditions in Kentucky Power's service territory and Kentucky Power's generation needs. The Attorney General supports a management audit of Kentucky Power and requests permission to recommend issues to be reviewed if the Commission decides to grant Mr. Coleman's request.

The Commission has exclusive jurisdiction to regulate utility rates and service,⁴ which includes the authority to investigate whether a utility's rates are fair, just, and reasonable.⁵ These investigations occur upon complaint filed by a utility customer, upon the Commission's own motion, or in conjunction with rate proceedings. Mr. Coleman filed his complaint based on the Commission's authority under KRS 278.250 and KRS 278.255. KRS 278.250 permits the Commission to investigate the condition of any utility "whenever it is necessary." KRS 278.255 permits the Commission to order a periodic audit to investigate a utility's management and operating procedures.

Because this matter is a complaint case, the Commission must consider Mr. Coleman's request under KRS 278.260, which establishes the Commission's jurisdiction

² Case No. 2016-00073, *An Investigation of the Accuracy of Kentucky Power Company's Fuel Adjustment Clause Filings* (Ky. PSC Jan. 18, 2017).

³ Case No. 2015-00093, *Cintas Corporation v. Kentucky Power Company* (Ky. PSC Apr. 23, 2015). Cintas Corporation's concern that it was overbilled was satisfied, and therefore it withdrew its complaint.

⁴ KRS 278.040.

⁵ KRS 278.030.

over complaints regarding a utility's rates or service. The complaint process is premised on individualized acts or omissions made by a utility that does not comport with the statutory and regulatory law, or a Commission order, to the detriment of the person making the complaint. As such, the complaint process is adversarial, with the complainant bearing the burden of proof regarding allegations made against the utility.

KRS 278.260 requires that the complaint be made in writing and, relevant here, relate to a utility rate "in which the complainant is directly interested" that is "unreasonable or unjustly discriminatory." Mr. Coleman satisfies the requirement that the complaint be made in writing. However, the basis of Mr. Coleman's complaint is the affordability of electric service provided by Kentucky Power in general, and whether Kentucky Power's management practices affect the affordability of its rates.

Mr. Coleman does not allege that a rate in which he is directly interested is unreasonable or unjustly discriminatory. Mr. Coleman alleges that Kentucky Power's business practices, in general, are not sufficiently efficient or frugal, and thus all of Kentucky Power's customers are charged higher rates than would be charged if Kentucky Power followed better management practices. As a procedural matter, Mr. Coleman fails to satisfy the requirement that a complaint be based on individualized acts or omissions.

Establishing a management audit as a remedy for a complaint case is inconsistent with Commission precedent. As explained above, a complaint is an adversarial process. The Commission has expressly stated that a management audit "must not be an adversarial proceeding."⁶ For example, the Commission denied requests by Intervenors in a rate case to participate in a subsequent management audit as a party with equal

⁶ Case No. 2013-00199, *Application of Big Rivers Electric Corporation for a General Adjustment in Rates Supported by Fully Forecasted Test Period* (Ky. PSC June 6, 2014), pages 4–5.

status as the utility being audited. The Commission found that, in a management audit, granting party status to a person other than the utility creates an unreasonable risk of the audit becoming adversarial in nature, which could unduly complicate the audit, and increase the length and cost of the audit.⁷

The exhibits filed by Mr. Coleman, along with two recent cases, document that the Commission is carrying out its statutory duty to ensure that Kentucky Power provides substantial evidence to justify a finding that its rates are just and reasonable. Exhibit 2 to Mr. Coleman's complaint references the Commission's January 22, 2015 Order in Case No. 2014-00225, which resulted in a \$13.2 million refund to Kentucky Power's customers and prohibited Kentucky Power from collecting roughly \$42 million in future charges. This resulted directly from the Commission's investigation, which revealed Kentucky Power's failure to disclose certain costs. The Commission chastised Kentucky Power and disallowed recovery of those costs because they were not disclosed and resulted in unreasonable rates.⁸ Similarly, Exhibit 3 documents that the Commission investigated errors in FAC filings discovered in another matter, identified the cause, determined that Kentucky Power undertook reasonable corrective actions, and found that the errors did not impact the amount paid by customers.⁹

The cases referenced in Mr. Coleman's exhibits demonstrate that the Commission has been proactive in following up on identified discrepancies and bringing them to a reasonable resolution that protects Kentucky Power's customers. Most recently, the

⁷ *Id.*

⁸ Case No. 2014-00225, *Kentucky Power*, January 22, 2015 Order, pages 9–14.

⁹ Case No. 2016-00073, *Kentucky Power*, January 18, 2017 Order, pages 4–5.

Commission decreased Kentucky Power's average monthly residential bill by four percent as a result of its decisions in Kentucky Power's general rate adjustment¹⁰ and in a review of Kentucky Power's demand-side management programs and customer surcharges.¹¹

For the above reasons, the Commission finds that Mr. Coleman's complaint should be dismissed because it is based upon generalized concerns, rather than a rate in which Mr. Coleman is directly interested, and because the remedy requested regarding a management audit is not appropriately addressed in a complaint proceeding. Because Mr. Coleman's complaint is more akin to a public comment, the Commission will take it under advisement as a public comment. The Commission takes seriously the issues raised by Mr. Coleman and the Attorney General, and will give them due consideration as public comments. Further, we will continue to carry out our statutory duty of ensuring that Kentucky Power's rates are fair, just, and reasonable.

Finally, Mr. Coleman requested confidential treatment for the entirety of the petition he filed as Exhibit 1. As a basis for his request, Mr. Coleman states that public disclosure of the information on the petition prohibited by KRS 61.878(a) because it could result in stolen identity, physical harm, and loss of money. KRS 61.878(a) prohibits public disclosure of personal information that "would constitute a clearly unwarranted invasion of personal privacy." The designated information consists of the signer's name, street address, county of residence, and telephone number. The petition informs potential

¹⁰ Case No. 2017-00179, *Electronic Application of Kentucky Power Company for (1) a General Adjustment of Its Rates for Electric Service; (2) An Order Approving Its 2017 Environmental Compliance Plan; (3) an Order Approving Its Tariffs and Riders; (4) an Order Approving Accounting Practices to Establish Regulatory Assets and Liabilities; and (5) an Order Granting All Other Required Approvals and Relief* (Ky. PSC Jan. 18, 2018).

¹¹ Case No. 2017-00097, *Electronic Investigation of the Reasonableness of the Demand Side Management Programs and Rates of Kentucky Power Company* (Ky. PSC Jan. 18, 2018).

signers that it is being collected to request a management audit of Kentucky Power and will be filed with the Attorney General. Thus, persons signing the petition were on notice that this would be filed with a state governmental entity as a public comment. Moreover, each page of the petition has space for up to 39 signatories, which puts signer on notice that their information would be available to other signers. Petitions filed with governmental entities that are signed in public view must be examined to verify identities. For example, public comments regarding an electric utility should be made by persons residing in the utility's service area in order to be fully considered. The Commission has long required persons who want their public comments placed into a case file to provide their street address and city without redaction, but redacts telephone numbers as confidential. For the above reasons, the Commission finds that the request for confidential treatment for the names and addresses on the petitions should be denied, and that the request for confidential treatment for the signers' telephone numbers should be granted.

IT IS THEREFORE ORDERED that:

1. Mr. Coleman's Complaint is denied.
2. Mr. Coleman's request for confidential treatment of Exhibit 1 to the Complaint is granted in part and denied in part.
3. Mr. Coleman's request for confidential treatment of signer's telephone numbers contained in Exhibit 1 to the Complaint is granted. The information granted confidential treatment contained in Exhibit 1 to the Complaint shall not be placed in the public record or made available for public inspection for an indefinite period of time.

4. Mr. Coleman's request for confidential treatment of signer's names, addresses, and county of residence contained in Exhibit 1 to the Complaint is denied.

5. The materials for which the request for confidential treatment has been denied shall not be placed in the public record or made available for inspection for 20 days from the date of entry of this Order to allow Mr. Coleman to seek a remedy afforded by law.

6. Within 20 days of the date of this Order, Mr. Coleman shall file revised Exhibit 1 to the Complaint reflected the redaction of information determined to be confidential and reflecting as unredacted the information that has been denied confidential treatment.

7. Use of the materials for which confidential protection was granted shall comply with 807 KAR 5:001, Section 13(9).

8. If a non-party to this proceeding requests to inspect materials granted confidential treatment by this order and the period during which the materials have been granted confidential treatment has not run, Mr. Coleman shall have 20 days from receipt of written notice of the request to demonstrate that the materials still fall within the exclusions from disclosure requirements established in KRS 61.878. If Mr. Coleman is unable to make such demonstration, the requested materials shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

9. The Commission shall not make the materials available for inspection for 20 days following an order finding that the materials no longer qualify for confidential treatment in order to allow Mr. Coleman to seek a remedy afforded by law.

10. This case is closed and removed from the Commission's docket.

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By the Commission



ATTEST:


Executive Director

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