

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ROSEMARY SPICER	)	
	)	
COMPLAINANT	)	
	)	
V.	)	CASE NO.
	)	2021-00287
JACKSON ENERGY COOPERATIVE	)	
CORPORATION	)	
	)	
DEFENDANT	)	

ORDER

This matter arises upon Jackson Energy Cooperative Corporation's (Jackson Energy) motion to dismiss Rosemary Spicer's complaint, which alleged that Jackson Energy failed to provide her with a line extension to her property. The complaint requested that Jackson Energy be required to provide the line extension.

LEGAL STANDARD

Commission regulation 807 KAR 5:001, Section 20(4)(a), requires the Commission to determine whether a complainant has established 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.

Further, 807 KAR 5:001, Section 20(4)(1)(a), states that 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.

### BACKGROUND

Ms. Spicer requested Jackson Energy extend service to her property at 1861 Pine Grove Road, Beattyville, Kentucky. Ms. Spicer has a cabin on the property that does not have a sewer connection or a septic system. There is an outhouse on the property. Ms. Spicer claimed she contacted Jackson Energy and was informed that to have electric service extended to her cabin she must receive a release from the health department stating the property meets health department standards.<sup>1</sup> On April 29, 2021, Ms. Spicer received a release for permanent electric service to her property from Kentucky River District Health Department.<sup>2</sup> Ms. Spicer then contacted Jackson Energy to have the line installed.

On May 13, 2021, a staking engineer went to Ms. Spicer's property. The cabin is located 975 feet from Jackson Energy's nearest electric pole. The staking engineer noted that the cabin did not have sewer connection or a septic system. Ms. Spicer showed the staking engineer the release from Kentucky River District Health Department allowing electrical service. The staking engineer informed Ms. Spicer that he would have to speak with others at Jackson Energy before proceeding.<sup>3</sup>

Jackson Energy's Tariff states that Jackson Energy will provide a line extension of up to 1,000 feet to permanent dwellings, but extensions of 150 feet will be provided to

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<sup>1</sup> Rosemary Spicer Complaint at 3.

<sup>2</sup> *Id.* at 7.

<sup>3</sup> *Id.* at 4.

other structures.<sup>4</sup> Jackson Energy's Tariff defines a permanent dwelling as "a structure enclosed with exterior walls or fire walls, built, and framed of component structural parts and designed for year-round occupancy. . . . All permanent dwellings shall have sewer or septic services."<sup>5</sup> Jackson Energy maintains it cannot establish service until the owner has received proper permits from the local health department and electrical inspector.<sup>6</sup>

Jackson Energy contacted the Kentucky River District Health Department about the release Ms. Spicer had provided to the staking engineer. James Whisman, environmental program manager with Kentucky River District Health Department, informed Jackson Energy that the release for permanent electric service had been rescinded because Ms. Spicer was going to use a wastewater disposal system that did not meet the Kentucky Onsite Sewage Regulations.<sup>7</sup>

On September 2, 2021, the Commission ordered Ms. Spicer to file a response to Jackson Energy's answer and to provide documentation that the Kentucky River Health Department release for electric service was in full force and effect. On September 30, 2021, Jackson Energy filed the motion to dismiss stating Ms. Spicer did not comply with the Commission's Order issued on September 2, 2021. On November 2, 2021, Commission entered another Order requesting that Ms. Spicer provide documentation that the release from Kentucky River Health Department is still in force and effect within 20 days of entry of the Order. On November 24, 2021, Jackson Energy again filed a

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<sup>4</sup> Jackson Energy Tariff, 1<sup>st</sup> Revised Sheet No. 112.

<sup>5</sup> Jackson Energy Tariff, Original Sheet No. 111.

<sup>6</sup> Jackson Energy Answer to Complaint at 2.

<sup>7</sup> Jackson Energy Response to Commission Order, Attachment at 1.

motion to dismiss the complaint due to Ms. Spicer's failure to provide the requested documents.

### DISCUSSION AND FINDINGS

Commission regulation 807 KAR 5:001, Section 20(4)(a), requires the complaint to establish a prima facie case. Ms. Spicer has failed to establish a prima facie case that Jackson Energy has failed to comply with the terms of the tariff on file with the Commission. The tariff requires a structure to be a permanent dwelling to qualify for the 1,000 feet line extension. The tariff defines a permanent dwelling as one with sewer connection or septic system. Ms. Spicer, by her own complaint, acknowledges there is not sewer connection or septic system on the property but claimed to have a release from the Kentucky River District Health Department allowing a deviation.

Further, 807 KAR 5:001, Section 20(4)(1)(a) states that 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. The Commission entered an Order on September 2, 2021, and November 2, 2021, requesting Ms. Spicer produce the release from the Kentucky River District Health Department. Ms. Spicer has failed to provide this documentation.

The Commission finds the Complaint does not establish a prima facie case. The Commission further finds that Jackson Energy's motion to dismiss the complaint should be granted.

IT IS THEREFORE ORDERED that:

1. Ms. Spicer's complaint fails to state a prima facie case.

2. Jackson Energy's motion to dismiss the Ms. Spicer's complaint is granted.
3. The case is closed and removed from the Commission's docket.

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By the Commission

ENTERED  
DEC 07 2021  
rcs  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director

Case No. 2021-00287

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