

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BIOFUEL MINING, INC.)	
)	
COMPLAINANT)	
)	CASE NO.
V.)	2022-00133
)	
KENTUCKY POWER COMPANY)	
)	
DEFENDANT)	

ORDER

This matter arises on a complaint filed by Biofuel Mining, Inc. (Biofuel), a crypto mining company, against Kentucky Power Company (Kentucky Power). On April 29, 2022, Biofuel filed a complaint alleging that Kentucky Power failed to provide a rate schedule under which Biofuel would take service, required a \$2.5 million deposit with only seven days' notice, and failed to provide the basis for the deposit amount. By Order entered May 6, 2022, the Commission rejected Biofuel's complaint for failing to state a prima facie case because the complaint failed to identify any acts or omissions by Kentucky Power that violate any statute, regulation, or tariff enforced by the Commission. The Commission granted Biofuel the opportunity to amend its complaint within ten days of that Order, stating that if the amended complaint failed to state a prima facie case, the Commission shall dismiss the complaint by separate Order.

On May 17, 2022, Biofuel tendered an amended complaint and requested leave to file the amended complaint one day after the ten-day period.

LEGAL STANDARD

Commission regulation 807 KAR 5:001, Section 20, governs the filing of a formal complaint. In accordance with 807 KAR 5:001, Section 20(1)(c), a complaint must state “[f]ully, clearly, and with reasonable certainty, the act or omission” that the complaint alleges the utility failed to comply with, and facts with details of the alleged failure. In accordance with 807 KAR 5:001, Section 20(4)(a), the Commission examines a complaint to determine whether the complaint establishes a prima facie case and conforms to the administrative regulation. A complaint establishes a prima facie case when, on its face, it states sufficient allegations that, if uncontradicted by other evidence, would entitle the complainant to the requested relief. If a complaint fails to establish a prima facie case or conform to the administrative regulation 807 KAR 5:001, Section 20(4)(a)(1), that provides that the complainant be notified and provided an opportunity to amend the complaint within a specified time. Additionally, 807 KAR 5:001, Section 20(4)(a)(2) provides that if the complaint is not amended within the time that the Commission grants, then the complaint shall be dismissed.

KRS 278.030(1) states that “[e]very utility may demand, collect and receive fair, just and reasonable rates” for services provided. KRS 278.030(2) states that “[e]very utility shall furnish adequate, efficient and reasonable service, and may establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service.”

KRS 278.160 requires a utility to file with the Commission a written schedule of rates and conditions for service (Tariff), and written special contracts that contain rates

and conditions of service. Commission regulation 807 KAR 5:011, Section 4, sets forth the contents of Tariffs.

Commission regulation 807 KAR 5:006, Section 8, governs customer deposits. The deposit amount is calculated as set forth in 807 KAR 5:008: (1) actual usage data for the customer at the same premises for the most recent 12 month period; (2) if actual usage is not available, estimated usage based on the average bills of similar customers and premises in the utility's system; and (3) the deposit amount shall not exceed 2/12 of the average bill if bills are rendered monthly, such as with Kentucky Power. Further, 807 KAR 5:006, Section 8(5), provides that a utility may refuse service to a customer if the customer does not pay the requested deposit.

Kentucky Power's Tariffs, which are approved by the Commission, establish conditions of service regarding deposits that conform to Commission regulations. Kentucky Power Tariff Sheet 2-2, Section 4, states that, prior to providing service or any time after service begun, Kentucky Power can require a cash deposit or other guaranty to secure payment of bills. Kentucky Power's Tariff Sheet 2-3, Section 4(c)(1)(b), provides that deposits for commercial and industrial customers are calculated using actual usage data or, if not available, data usage for similar customers and premises in that customer class, and that the deposit shall not exceed 2/12, or more simply, two months of a customer's actual or estimated annual bill.

AMENDED COMPLAINT

In the amended complaint, Biofuel restated the allegations that it had a verbal contract with Kentucky Power, and that Kentucky Power declined to enter into a written contract to provide service to Biofuel, failed to provide a rate schedule under which Biofuel

would take service, required a \$2.5 million deposit with only seven days' notice, and failed to provide the basis for the deposit amount. In new allegations, Biofuel claimed that Kentucky Power had agreed to a rate schedule and deposit amount, and then proposed a rate schedule and deposit that were different from the previous agreement. Biofuel argued that it was unlawful for Kentucky Power to modify an agreed upon rate and that it was impossible to comply with Kentucky Power's request for a \$2.5 million deposit with only seven days' notice, and thus the request was not equitable or reasonable, or supported by a statute or regulation. Biofuel further argued that 807 KAR 5:006 required Kentucky Power to provide a reasonable deposit request, which Biofuel asserted was 30 days.

DISCUSSION AND FINDINGS

As an initial matter, the Commission reiterates our finding in the May 6, 2022 Order that Biofuel provided evidence in its original complaint that Kentucky Power actually provided a rate schedule under which Biofuel would take service, that Biofuel received actual notice in February and March 2022 that it must pay a \$2.5 million deposit to take service, that Biofuel would be provided with seven days' notice to pay the deposit, and that Biofuel was provided the basis for the calculation of the deposit amount.¹ Biofuel did not provide any new information or evidence in the amended complaint that causes the Commission to reconsider that finding.

Instead, in the amended complaint, Biofuel proffered unsupported statements that Biofuel had an "agreement" with Kentucky Power,² but offered no evidence of such an

¹ May 6, 2022 Order at 4–7; Complaint (filed May 2, 2022), unnumbered page 3, and Exhibits A and B.

² Amended Complaint (filed May 17, 2022), paragraphs 3, 4, 5, 6, 7, and 14.

agreement, or supporting information such as the date of the agreement or the terms of the rate schedule and deposit amount the parties to which the parties allegedly agreed, such as the alleged rate schedule and deposit amount. To the degree that Biofuel relies upon a purported verbal agreement, for the same reasons set forth in the May 6, 2022 Order, the Commission rejects Biofuel's claim that Kentucky Power verbally contracted with Biofuel to provide service. KRS 278.160 requires that all Tariffs and special contracts be in writing and that there is no provision for a verbal contract under KRS Chapter 278. Because a verbal contract is not legal under KRS Chapter 278, any verbal contract, if one existed, would be void and unenforceable. Further, in accordance with KRS 278.160, unless there is a written special contract, the rates set forth in Kentucky Power's Tariff control and are applied to electric usage.

Biofuel offered generalized statements regarding "applicable laws" without stating with specificity what statutory, regulatory, or case laws applied to Biofuel's claims.³ Further, Biofuel ignores the provisions of the only law it cites, 807 KAR 5:006, regarding deposits, substituting Biofuel's desired result for the express language of the law. Finally, Biofuel seeks to apply contract law to matters addressed by statutory law in KRS Chapter 278.

Based upon a review of the amended complaint, motion, statutes, tariffs, and regulations, and being otherwise sufficiently advised, the Commission finds that Biofuel failed to state sufficient allegations to establish a prima facie case because the amended complaint failed to identify any acts or omissions by Kentucky Power that violate any statute, regulation, or tariff enforced by the Commission. Weighing Biofuel's allegations

³ Amended Complaint, paragraphs 8, 11, and 12.

contained in the amended agreement, most of which merely repeat what was in the original complaint, against the evidence filed by Biofuel, the evidence of record reflects that Kentucky Power calculated the deposit amount as required by Kentucky Power's Tariff and Commission regulations based upon two months of actual or estimated usage. Kentucky Power's Tariff and Commission regulations provide that payment of a deposit may be required as a condition of service, as it was here. In addition to the evidence of record, Biofuel admits that it received actual notice of the deposit amount on February 7, 2022, and March 28, 2022.⁴ Finally, the evidence of record reflects that Biofuel received actual notice that Biofuel would have seven calendar days to pay the deposit in full substantially prior to Kentucky Power's request for deposit payment and received actual notice of the methodology for calculating the deposit.⁵

For the above reasons, the Commission finds that Biofuel's amended complaint should be rejected for failing to establish prima facie case. The Commission further finds that, in accordance with 807 KAR 5:001, Section 20(4)(a)(2), Biofuel's amended complaint shall be dismissed.

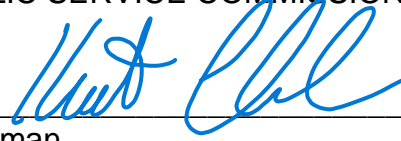
IT IS THEREFORE ORDERED that:

1. Biofuel's amended complaint is rejected for failing to state a prima facie case.
2. Biofuel's amended complaint is dismissed.
3. This case is closed and removed from the Commission's docket.

⁴ Complaint, unnumbered page 3.

⁵ Complaint, Exhibit B, unnumbered pages 5–6, 9.

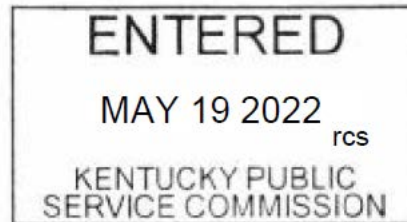
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Vice Chairman

Commissioner



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