

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

RICKY T. DUNCAN)	
)	
COMPLAINANT)	
)	
V.)	CASE NO.
)	2023-00384
EAST DAVIESS COUNTY WATER ASSOCIATION,)	
INC.)	
)	
DEFENDANT)	

ORDER

On November 20, 2023, Ricky T. Duncan tendered a formal complaint¹ with the Commission against East Daviess County Water Association, Inc. (East Daviess Water), alleging that Mr. Duncan should not be responsible for the repair bill sent to him by East Daviess Water because Mr. Duncan was more than 32 inches away from the water meter base. By Order² issued March 4, 2024, the Commission determined pursuant to 807 KAR 5:001, Section 20(4)(a), that Mr. Duncan had not established a *prima facie* case but was entitled to an opportunity to amend his complaint within 20 days of the date of service of the Order. On March 28, 2024, the Commission received a response³ to the Commission's March 4, 2024 Order from Mr. Duncan. For the following reasons, the Commission finds that Mr. Duncan's complaint should be dismissed for not being

¹ Complaint (filed Nov. 20, 2023).

² Order (Ky. PSC Mar. 4, 2024) at 4-5.

³ Response (filed Mar. 28, 2024).

amended within the time the Commission had granted, and the case closed and removed from the Commission's docket.

LEGAL STANDARD

Pursuant to KRS 278.260, the Commission has jurisdiction over complaints regarding rates or service.⁴ Commission regulation 807 KAR 5:001, Section 20(1)(c) requires each complaint to state fully, clearly and with reasonable certainty, the act or omission, of which failure to comply is alleged.⁵ Furthermore, 807 KAR 5:001, Section 20(4)(a), requires the Commission to examine the complaint to ascertain if the complaint establishes a *prima facie* case that the utility has violated a statute, regulation, tariff, or order for which the Commission may grant relief.⁶ 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, it may be dismissed. However, 807 KAR 5:001, Section 20(4)(a)(1) allows a complainant to amend a complaint within a specified time.⁷

BACKGROUND

Mr. Duncan's complaint alleged that he was digging a trench to replace a water line on the inside of a fence located at a residence with an address of 8931 Aubrey Road, Maceo, Kentucky 42355.⁸ Mr. Duncan claimed he was digging a total distance of

⁴ KRS 278.206.

⁵ 807 KAR 5:001, Section 20(4)(c).

⁶ 807 KAR 5:001, Section 20(4)(a).

⁷ 807 KAR 5:001, Section 20(4)(a)(1).

⁸ Complaint (filed Nov. 20, 2023) at 1.

32 inches away from a water meter base when water erupted from inside the water base.⁹ Mr. Duncan alleged he called East Daviess Water to report the leak.¹⁰ In response to the phone call from Mr. Duncan, East Daviess Water repaired the water leak and gave Mr. Duncan a repair bill in the amount of \$916.68 that East Daviess Water indicated Mr. Duncan was responsible to pay.¹¹ Mr. Duncan argued that he be held not responsible to pay the repair bill, "... due to the fact that he was at least 32" away from meter base there was no meter there."¹²

By Order issued on March 4, 2024, the Commission rejected Mr. Duncan's complaint for failing to state a *prima facie* case. However, the Order afforded Mr. Duncan 20 days from the date of service of the Order to file an amended complaint that conformed to the requirements of KAR 5:001, Section 20(1) and stated a *prima facie* case.

On March 28, 2024, the PSC received a response from Mr. Duncan to the Commission's March 4, 2024 Order.

DISCUSSION

Under 807 KAR 5:001, Section 20(4)(a)(2), "If the complaint is not amended within the time or the extension as the commission, for good cause shown, shall grant, the complaint shall be dismissed."¹³ The Commission's Order affording Mr. Duncan 20 days to file an amended complaint was issued on March 4, 2024, and was sent to Mr. Duncan via United States Postal Service (USPS) certified mail to Mr. Duncan's home address. A

⁹ Complaint at 2.

¹⁰ Complaint at 2.

¹¹ Complaint at 2.

¹² Complaint at 2.

¹³ 807 KAR 5:001, Section 20(4)(a)(2).

USPS receipt¹⁴ indicates that Mr. Duncan signed for and received a copy of the March 4, 2024 Order sent via USPS certified mail at 1:15 p.m. on March 7, 2024. Consequently, Mr. Duncan had to file a response on or before March 27, 2024, which is 20 days from March 7, 2024, the day Mr. Duncan was served. Mr. Duncan filed an untimely response on March 28, 2024, and therefore, in accordance with 807 KAR 5:001, Section 20(4)(a)(2), his complaint should be dismissed.


Furthermore, even if Mr. Duncan's amended complaint had been filed within 20 days of service of the March 4, 2024 Order, the amended complaint does not fully, clearly, and with reasonable certainty state the act or omission that East Daviess Water is alleged to have committed as required by 807 KAR 5:001, Section 20(1)(c), nor does the amended complaint establish a *prima facie* case that the utility has violated a statute, regulation, tariff, or order for which the Commission may grant relief. Instead, Mr. Duncan's amended complaint simply reiterates the same alleged facts and arguments contained within his initial complaint which the Commission has already addressed with its March 4, 2024 Order. Therefore, Mr. Duncan's complaint is dismissed.

IT IS THEREFORE ORDERED that:

1. The complaint is dismissed.
2. The case is closed and shall be removed from the Commission's docket.

¹⁴ PSC Letter Filing USPS Certified Mail Receipt into the Record (filed Apr. 16, 2024).

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
MAY 09 2024 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

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