

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KANAWHA HALL)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 2004-00307
)	
EQUITABLE PRODUCTION COMPANY)	
)	
DEFENDANT)	

ORDER

Kanawha Hall has filed with this Commission a formal complaint against Equitable Production Company ("Equitable") in which he alleges that Equitable is unreasonably discriminating against him by assessing a different rate for natural gas service than it assesses neighboring customers and requests a refund of alleged overcharges. Finding that the complaint fails to state a *prima facie* case, we dismiss the complaint.

Equitable is a corporation organized under the laws of the Commonwealth of Pennsylvania.¹ It operates a natural gas pipeline that obtains natural gas from producing natural gas wells within Kentucky. Pursuant to KRS 278.485(1), it must furnish gas service at rates and charges that the Commission determines to certain

¹ Equitable Production Company (Organization No. 0513200) is listed as a foreign corporation in good standing with the Office of the Kentucky Secretary of State. See Kentucky Secretary of State Online Database, available at [http://www.sos.state.ky.us/obdb/\(cskpkcr5bwlglrktadgir55\)/home.aspx](http://www.sos.state.ky.us/obdb/(cskpkcr5bwlglrktadgir55)/home.aspx).

properties that are within one-half air mile of its gas well or gas gathering pipeline. See also Administrative Regulation 807 KAR 5:026, Section 9. According to its most current tariff on file with the Commission, Equitable assesses a rate of \$6.393 per thousand cubic feet of natural gas.²

The Complainant is a resident of Littcarr, Kentucky. Equitable currently provides natural gas service to his property. The Complainant alleges in his complaint that Equitable was assessing him a rate of \$6.39 per thousand cubic feet for such service.³ He further alleges that Equitable is assessing a rate of \$.35 per thousand cubic feet to several other persons and that such action constitutes “grossly unfair marketing practices” and undue discrimination against him.

In its answer, Equitable admits that it provides natural gas to certain users at the rate of \$.35 per thousand cubic feet based upon contractual right-of-way agreements. It further states that the Complainant is not now nor has he ever been a party in any such agreement and that it is not providing natural gas service at the rate of \$.35 per thousand cubic feet to any person who is not a party or successor-in-interest to a contractual right-of-way agreement.

Administrative Regulation 807 KAR 5:001, Section 12(4), requires the Commission to review each formal complaint upon its filing to determine whether the complaint establishes a *prima facie* case. A complaint establishes a *prima facie* case when, on its face, it states sufficient allegations that, if uncontradicted by other evidence, would entitle

² Equitable Production Company, Tariff Sheet 1.

³ In his complaint, the Complainant states that he is “off the gas line . . . and will never be back on it again.” He seeks a refund of these alleged overcharges. Complaint at 2.

the complainant to the requested relief. If a complaint fails to establish a *prima facie* case, it may be dismissed.

Based upon our review of the complaint, we find that the Complainant's allegations fail to establish a *prima facie* case. KRS 278.485(1) requires Equitable to provide natural gas service to the Complainant at "rates and charges that the Commission determines." The Commission has previously determined that Equitable should provide service at \$6.393 per thousand cubic feet. The Complainant alleges that Equitable provided him natural gas service at that rate. Therefore, no basis for directing a refund exists.

As to Complainant's contention of discrimination, we note that the Complainant fails to allege that he was a party to any contractual right-of-way agreement with Equitable or its predecessors-in-interest that provided for natural gas service at the rate of \$.35 per thousand cubic feet. Assuming that such an allegation was made or that such agreement existed, it is irrelevant for our purposes. This Commission lacks any jurisdiction over the terms of such agreement unless the natural gas provider is a utility. See Blazer Energy Corp., Inc., Case No. 1998-00498 (Ky.PSC Feb. 9, 2000); Ashland Exploration, Inc., Case No. 1991-00396 (Ky.PSC July 1, 1993). Equitable fails to meet the statutory definition of "utility."

IT IS THEREFORE ORDERED that the complaint is dismissed with prejudice and is removed from the Commission's docket.

Done at Frankfort, Kentucky, this 28th day of October, 2004.

By the Commission

ATTEST:


Executive Director