

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOHN ARTHUR YARBROUGH)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 2004-00189
)	
KENTUCKY UTILITIES COMPANY)	
)	
DEFENDANT)	

O R D E R

On April 29, 2004, John Arthur Yarbrough filed a complaint against Kentucky Utilities Company ("KU") alleging that KU's negligence in reattaching his service line caused damage to his property. Mr. Yarbrough requested that the Commission order KU to reimburse him for damage to his property.

In its June 25, 2004 Order, the Commission found that it did not have the authority to adjudicate claims arising out of KU's alleged negligence and could not award damages. In that same Order, however, the Commission, noting that Complainant also alleged unreasonable service, ordered KU to satisfy or answer the complaint.

Comes now the Commission and finds that Complainant states no claim upon which relief may be based and that the complaint should be dismissed.

BACKGROUND

Confusion surrounds the chronology of the events that ultimately led to the filing of this complaint. Complainant's uncertainty about relevant dates and KU's initial lack of a response to Complainant's inquiries did nothing to alleviate this confusion.

According to Complainant, at sometime in 2000, two KU linemen repaired his electrical service that had been pulled away from his house by a falling limb. The linemen cut and shortened the service wire to lessen the swag and attached the service line with a "wire-clamp" type connector. On November 29, 2002, Complainant returned to his residence and observed that the lights in his house were extra bright, the refrigerator was cycling strangely and smoke was emitting from the stereo. Upon inspection, Complainant discovered that the neutral wire at his service connection had become disconnected, causing 220 volts to run throughout his residence. Upon inspection Complainant observed that the neutral splice from his service connection had come loose.

According to the Complainant, a KU lineman came and repaired the splice. The Complainant and the lineman noted that a rotted limb might have caused the neutral to become disconnected. Complainant argues that if his line had been properly repaired in 1998, the limb would not have been large enough to pull the neutral loose, or, in the alternative, would have pulled his entire service connection loose, thus preventing the damage to his property.

It appears from the record that Complainant's initial inquiries to KU regarding the damage to his property went unanswered for a long time. It is unclear when Complainant first contacted KU regarding the damage, but by letter dated March 20,

2002, Risk Management Services Corporation ("Risk Management Services") responded on KU's behalf and denied KU's liability regarding the damage. In this letter, Risk Management Services indicated that KU's records reflected that a limb had fallen on a transformer, which then pulled Complainant's neutral loose.

By telefax sent on August 28, 2003, Complainant contacted Risk Management Services and disputed the factual assertions in Risk Management Services' March 20, 2002 letter. Complainant alleges that he and the KU lineman who had repaired his service on November 29, 2001 agreed that no limbs had fallen recently. Complainant also alleges that he would not have accepted the repair in 1998 if he had known it might cause his neutral to be disconnected. Complainant requested that his service line, which was spliced, be replaced with a non-spliced line.

By letter dated August 29, 2003, Risk Management Services responded to Complainant's telefax, denied any liability for the damage to his property and stated that KU's records indicated that a limb 6-8 feet long and 4-6 inches in diameter had fallen on Complainant's service. Risk Management Services also informed Complainant that any replacement of the spliced line with one that was not spliced would not be done at KU's expense.

According to KU's response, the alleged date of the faulty repair was prior to August 1, 1998, not sometime in 2000 as Complainant alleges, because that was the date of retirement of the lineman who repaired Complainant's service line. KU had no record of repairs to Complainant's residence prior to November 29, 2001. KU also provided an Interruption Report for Complainant's residence dated November 29, 2001. The KU lineman who repaired Complainant's service noted on the report that trees had

caused the problem and also noted that a tree had hit the transformer and had fallen through the service line.

Complainant subsequently submitted two letters to the Commission on July 7, 2004 and August 9, 2004. In the July 7, 2004 letter, he suggested that when his service was repaired in 1998, it might have been "hot" and, therefore, may have been recorded on a different form than the standard interruption of service form. In both letters Complainant identified one of the linemen who repaired his service in 1998. Complainant suggested that the Commission contact Mr. Laffoon, the retired lineman to inquire about the 1998 repair to Complainant's service.

DISCUSSION

Complainant requests relief on two issues: (1) that his service line be replaced with a line without a connector and (2) that KU reimburse him for damage to his electronics. As discussed below, the Commission cannot grant relief on either ground.

Complainant appears to allege KU's negligence, that is, but for KU's faulty repair in 1998, his property would not have been damaged on November 29, 2001 when his neutral became disconnected. KRS Chapter 278 does not delegate to the Commission any authority to adjudicate claims arising out of a utility's negligence. KRS 278.260 grants the Commission only "original jurisdiction over complaints as to rates or service of any utility." See also KRS 278.280. Authority to adjudicate such claims cannot be reasonably inferred consistent with the Kentucky Constitution. See Kentucky Constitution § 14; Carr v. Cincinnati Bell, Inc., 651 S.W.2d 126 (Ky.App. 1983). Accordingly, the Commission lacks the authority to adjudicate the Complainant's claim for damages resulting from KU's alleged negligence.

Complainant's request that his line be replaced with a line that does not contain a connector relates to the quality of service that KU provides him. The Commission, therefore, has jurisdiction to investigate and rule on the claim.

On March 15, 2005, an inspector on the Commission's Staff, inspected Complainant's service connection.¹ As a result of the inspection, the inspector concluded that the level of service to Complainant's address was adequate and the service connection posed no safety threat. Any threat to the integrity of the lines was posed by tree limbs located above the service line. The inspector noted no violations of Commission regulations or statutes.

The evidence of record does not reveal that KU violated any Commission statutes or regulations. Nor does the evidence warrant that the Commission enter an Order directing KU to replace Complainant's service line. Absent a regulatory or statutory violation, or legitimate safety issue, the Commission cannot find that KU's actions or practices in this case are "unjust, unreasonable, unsafe, improper, inadequate or insufficient...."² Accordingly, the Commission cannot order the requested relief.

¹ A copy of the inspection report is attached as Appendix A.

² See KRS 278.280(1).

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

Done at Frankfort, Kentucky, this 13th day of July, 2005.

By the Commission

ATTEST:



Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2004-00189 DATED JULY 13, 2005

FIELD VISIT REPORT

KPSC ELECTRIC ENGINEERING STAFF

REASON: Consumer Complaint. John Yarbrough

CASE NUMBER: 2004-00189

DATE of FIELD VISIT: Tuesday, 3-15-05

TIME OF FIELD VISIT: 11:00AM CST.

UTILITY: Kentucky Utilities Co.

LOCATION: 1575 Ilsley Rd. (Hwy. 112) West of Earlington, Ky.

K.U. CO. EQUIPMENT ON SITE:

1-35' Pole. Installed 1950.
1-10 KVA Transformer.
1-#4 Triplex Service. 95' in Length.
1 KWH Meter. # W102211, Installed 10-28-96.

K.U. CO. VOLTAGE READING AT
THE CUSTOMER'S METER BASE: 122 /244 VOLTS.

PERSONS PRESENT AT MEETING: Steve Kingsolver, PSC
Donnie Mills, KU Operations Manager.

John Yarbrough, (Not Present)

DIRECTIVE: To evaluate the reliability of the Kentucky Utilities facilities serving Mr. Yarbrough's residence.

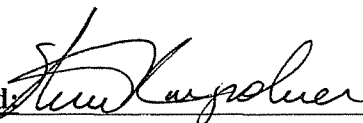
CONCLUSIONS: I meet with Donnie Mills, KU. Operations Manager in Earlington, at the above mentioned location. I evaluated the existing facilities that Kentucky Utilities has at this location.

I found that the level of service at this location is adequate. I found nothing at this location that was in violation of Industry Standard, Kentucky Utilities Standard, or the Public Service Commission Rules and Regulations.

NOTES: Donnie Mills, KU. Co, has stated to Mr. Yarbrough and Steve Kingsolver, PSC that at some point he would like to upgrade the service to a # 2 Triplex overhead service. This upgrade would remove the 3 neutral splices in the existing # 4 Triplex service. At the same time Mr. Mills stated that the existing # 4 Triplex service to Mr. Yarbrough's residence is adequate to provide quality service to this residence. Mr. Mills also stated that the upgrade to the # 2 Triplex overhead service would not remove the problem with the large trees that are near the existing service. This problem would only be removed by removing the large trees or replacing the existing overhead service with an underground service. Changing to an underground service would have costs involved to Mr. Yarbrough. This situation was started by the limbs falling out of the large trees on the overhead service to this residence.

REPORT SUBMITTED TO: Jeb Pinney, PSC
Jim Welch, PSC

REPORT FILED TO: *Utility Name* electronic accident file & hard copy in file room

Signed: 

Date: 3-17-05

*Steve Kingsolver
Electric Utility Investigator
Engineering Branch
Kentucky Public Service Commission*

