

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

TYRE HINSHAW)	
)	CASE NO.
COMPLAINANT)	2007-00096
)	
V.)	
)	
KENTUCKY UTILITIES COMPANY)	
)	
DEFENDANT)	

O R D E R

Tyre Hinshaw (“Complainant”) brings a complaint against Kentucky Utilities Company (“KU”) in which she seeks compensatory damages resulting from low voltage. Pursuant to 807 KAR 5:001, Section 12(4), the Commission has reviewed this complaint and finds that the Complainant seeks relief which is beyond the Commission’s jurisdictional authority.

Commission 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 sets forth 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, the Commission must notify the Complainant and provide a reasonable opportunity to amend the complaint.

The complaint alleges that Tyre Hinshaw lives in New Hope, Kentucky. KU furnishes electric power to her home. Ms. Hinshaw's new furnace would not run consistently and continued to shut down. After HVAC contractor Phelps Heating and Cooling, Inc. ("Phelps") was contacted to service the furnace, it was discovered that the furnace was not working due to low voltage. After KU was contacted, the voltage was increased and the problem with the furnace was corrected. Due to KU's supplying insufficient voltage, Ms. Hinshaw was forced to retain Phelps to get the problem with KU resolved.

Complainant further contends that since KU was responsible for the low voltage which caused the furnace to malfunction and necessitated the service calls by Phelps, KU has the obligation to pay Phelps \$130.00, which is the amount invoiced to Complainant.

The Commission has the statutory duty of regulating utilities and enforcing the provisions of KRS Chapter 278. It has "exclusive jurisdiction over the regulation of rates and service of utilities. . .and upon a complaint in writing made against any utility by any person that. . .the service of the utility or any service in connection therewith is unreasonable, unsafe, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the commission shall proceed. . .to make such investigation as it deems necessary or convenient."¹ It does not, however, possess the authority to award damages to individual utility customers.

Kentucky courts have long held that the Commission lacks the legal authority to award monetary damages. See Carr v. Cincinnati Bell, Inc., 651 S.W.2d 126, 128 (Ky.

¹ KRS 278.040(2) and KRS 278.260(1).

App. 1983). (“Nowhere in Chapter 278 do we find a delegation of power to the PSC to adjudicate contract claims for unliquidated damages. Nor would it be reasonable to infer that the Commission is so empowered or equipped to handle such claims consistent with constitutional requirement.”)² Other jurisdictions have similarly held. See, e.g., Southern Bell Telephone & Telegraph Co. v. Mobile American Corp., 291 S.2d 199 (Fla. 1974); Muskegon Agency, Inc. v. General Telephone Co., 65 N.W.2d 748 (Mich. 1954); Consumers Guild of America, Inc. v. Illinois Bell Telephone Co., 431 N.E.2d 1047 (Ill. App. Ct. 1981); and Lahke v. Cincinnati Bell, Inc., 439 N.E.2d 928 (Ohio App. Ct.. 1981). As the only relief which Complainant seeks is monetary damages, and as the award of such damages is outside the Commission’s jurisdiction, the Commission finds that the complaint fails to state a prima facie case and, if not amended to request relief which is within the Commission’s authority, should be dismissed.

IT IS THEREFORE ORDERED that:

1. Complainant shall have 20 days from the date of this Order to file an amended complaint which sets forth a prima facie case against KU on an issue that is within the scope of the Commission’s jurisdiction.

² See also Ash Avenue Sanitation Co., PSC Case No. 8519 (Jul. 29, 1982) (holding that the Commission cannot award damages resulting from a breach of a contract); Edwards v. South Central Bell Telephone Co., PSC Case No. 8131 (Feb. 20, 1981) (finding that, “. . .the Commission, an administrative body, is without jurisdiction to consider or award monetary damages”); and Triport Disposal Col., PSC Case No. 7979 (May 15, 1981) (holding that the damages arising out of a breach of contract “are civil matters over which the Commission has no jurisdiction”).

2. In the event that an amended complaint is not filed within 20 days of the date of this Order, this case shall be dismissed by separate Order.

Done at Frankfort, Kentucky, this 27th day of March, 2007.

By the Commission

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and a horizontal line at the bottom.

Executive Director