

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|-------------------------------|---|----------------------------|
| JUDY KEITH |) | |
| |) | |
| COMPLAINANT |) | |
| |) | |
| v. |) | CASE NO. 2020-00409 |
| |) | |
| SOUTHERN MADISON WATER |) | |
| DISTRICT |) | |
| |) | |
| DEFENDANT |) | |

**MOTION TO DISMISS COMPLAINT
AND SUPPORTING MEMORANDUM**

Pursuant to 807 KAR 5:001, Section 5, Southern Madison Water District (“Southern Madison” or “Defendant”) moves for dismissal of the Complaint on the following grounds: (1) lack of jurisdiction; (2) failure to state a prima facie case, and (3) requested relief is contrary to KRS 278.160.¹

¹ The letter of November 2, 2020, which Complainant designates as her complaint, also fails to conform with 807 KAR 5:001, Section 20. It does not contain the information required by that regulation and fails to state “[f]ully, clearly, and with reasonable certainty, the act or omission, of which complaint is made, with a reference, if practicable, to the law, order, or administrative regulation, of which a failure to comply is alleged, and other matters, or facts, if any, as necessary to acquaint the commission fully with the details of the alleged failure.” The Complaint is instead a collection of numerous documents which the Public Service Commission and the Defendant must wade through to discern the nature of the Complainant’s claim.

1. The Public Service Commission Lacks Jurisdiction Over the Requested Relief

In her Complaint, Complainant alleges that Southern Madison, when performing repairs to its facilities on or about July 24, 2020, caused excessive air pressure to accumulate in its water mains and this excessive pressure resulted in damage to her service line and to Complainant-owned pumping equipment located beyond the metering point. Complainant estimates the cost to repair these damages is \$2,068.47 and requests the Public Service Commission (the “Commission”) award her monetary compensation for her alleged damages. She seeks no other relief.

The Commission has limited authority over public utilities. *See, e.g., Boone County Water District v. Public Service Commission*, 949 S.W.2d 588, 591 (Ky. 1997) (“The PSC is a creature of statute and has only such powers as have been granted to it by the General Assembly.”) The Commission has the statutory duty to regulate utilities and enforce the provisions of KRS Chapter 278.² It has “exclusive jurisdiction over the regulation of rates and services of utilities”³ and “original jurisdiction over complaints as to rates or service of any utility.”⁴

The Complaint, however, raises no issues regarding Defendant’s rates or service. It does not challenge Defendant’s rates. It does not seek changes in the

² KRS 278.040(1).

³ KRS 278.040(2).

⁴ KRS 278.260(1).

quality of Defendant's service or how such service is rendered. It seeks only monetary damages.

Kentucky courts have long recognized the limitations of the Commission's jurisdiction and have held that the Commission's jurisdiction does not include the adjudication of monetary damage claims. *See Carr v. Cincinnati Bell, Inc.*, 651 S.W.2d 126, 128 (Ky.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.") The Commission has consistently held that complaints seeking monetary damages from a regulated public utility are beyond its jurisdiction and has dismissed them for lack of jurisdiction.⁵

⁵ *Ruthie Fay Cantrell and Ira Cantrell v. Licking Valley Rural Electric Cooperative Corporation*, Case No. 2017-00431 (Ky. PSC Jan. 19, 2018) (seeking reimbursement for damage to property due to alleged fault electric transformer); *Sonja D. and Patrick Stipes v. Farmdale Water District*, Case No. 2014-00193 (Ky. PSC June 20, 2014) (seeking damages related to failure to turn off water service connection); *Jeffery and Christy Vice v. Fleming-Mason Energy Cooperative*, Case No. 2013-00010 (seeking compensation for alleged damage to electronic equipment); *Gene Ray Hardy v. Louisville Gas and Electric Co.*, Case No. 2006-00043 (Ky. PSC Feb. 17, 2006); *John Arthur Yarbrough v. Kentucky Utilities Co.*, Case No. 2004-00189 (Ky. PSC July 13, 2005) (seeking reimbursement for damages related to alleged faulty installation of service line); *Charles T. Latko, Jr. and Lois G. Latko v. Taylor County Rural Electric Cooperative Corporation*, Case No. 2003-00395 (Ky. PSC Nov. 10, 2004) (seeking damages to property due to improper utility pole configuration); *Joseph Stanley Fogle v. Taylor County Rural Electric Cooperative Corporation*, Case No. 96-014 (Ky. PSC Feb. 23, 1996) (seeking reimbursement for damaged appliances due to alleged faulty transformer);

The sole question the Complaint presents involves monetary damages, not utility rates or service. That question is a matter within the jurisdiction of the courts, not the Commission. As the Commission lacks jurisdiction to hear and resolve the Complaint, the Complaint should be dismissed.

2. The Complaint Fails To State A Prima Facie Case

807 KAR 5:001, Section 20(4)(a) requires that a formal complaint must establish 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 state a *prima facie* case and cannot be amended to state such a case, the complaint must be dismissed.

The Commission has held that, given the Commission's lack of authority, a complaint that seeks only the award of monetary damages does not state a *prima facie* case.⁶ The Complaint does not allege facts that would allow the Commission to award the requested relief or to consider the complaint. In the absence of such allegations, the Complaint must be dismissed.

⁶ *Bulldog's Enterprises, Inc. d/b/a Bulldog's Road House*, Case No. 2010-0040 (Ky. PSC Nov. 15, 2010); *Tyre Hinshaw v. Kentucky Utilities Co.*, Case No. 2007-00096 (Ky. PSC Mar. 27, 2007); *Dr. Bart MacFarland, DMD v. Kentucky Utilities Co.*, Case No. 97-012 (Ky. PSC Jan. 21, 1997).

3. Requested Relief Is Contrary to KRS 278.160 and Requires The Commission to Violate a Statutory Duty

The filed rate doctrine, which is codified in KRS 278.160, requires public utilities to strictly adhere to their tariffs, which are on file with, and approved by, the Commission for service.⁷ Kentucky's state and federal courts have long recognized and applied this principle.⁸ The Commission has labeled the doctrine "the bedrock of utility rate regulation." Kentucky's treatment of the filed rate doctrine mirrors that of the United States Supreme Court, which declared that the "[t]he rights as defined by the tariff cannot be varied or enlarged by either contract or tort of the carrier."⁹

The Complaint requests relief that directly contravenes Southern Madison's unambiguous tariff. Original Sheet No. 23 of Southern Madison's tariff on file with the Commission provides that Southern Madison "shall not be liable in the event of, or for any loss, injury or damage to persons or property resulting from interruptions in service, excessive or . . . inadequate water pressure, or otherwise unsatisfactory service, whether or not caused by negligence." The Complaint seeks an order requiring Southern Madison to compensate the Complainant for alleged damages

⁷ *North Marshall Water District*, Case No. 95-107 (Ky. PSC Oct. 13, 1995) Order at 2. *See also Kentucky Power Company*, Case No. 93-380 (Ky. PSC Oct. 18, 1993) Order at 1.

⁸ *Commonwealth v. Anthem Ins. Cos., Inc.*, 8 S.W.3d 48, 52 (Ky. App. 1999); *Big Rivers Elec. Corp. v. Thorpe*, 921 F.Supp. 460, 464 (W.D. Ky. 1996).

⁹ *Anthem*, 8 S.W.3d at 51, quoting *Keogh v. Chicago & Northwestern Ry.*, 260 U.S. 156, 163 (1922). *See also AT&T v. Central Office Telephone*, 524 U.S. 214 (1998).

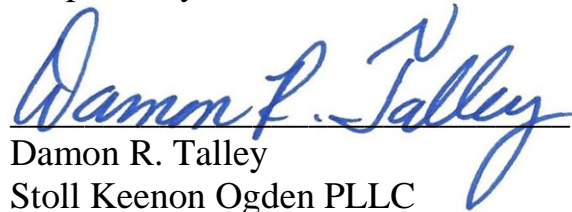
resulting from the excessive pressure. Such an order would require Southern Madison to violate the terms of its filed tariff and KRS 278.160. It would place the Commission in the dubious position of requiring a utility to violate the very same statute for which it has a statutory duty to enforce.¹⁰

Conclusion

WHEREFORE, for the reasons set forth in this Motion, Southern Madison Water District requests that the Commission enter an Order dismissing the Complaint with prejudice.

Dated: January 25, 2021

Respectfully submitted,



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¹⁰ KRS 278.040(1) (requiring the Commission to enforce the provisions of KRS Chapter 278).

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that Southern Madison Water District's electronic filing of this Motion is a true and accurate copy of the same document being filed in paper medium; that the electronic filing was transmitted to the Public Service Commission on January 25, 2021; that there are currently no parties that the Public Service Commission has excused from participation by electronic means in this proceeding; and that within 30 days following the termination of the state of emergency declared in Executive Order 2020-215, this Application in paper medium will be delivered to the Public Service Commission. A copy of this document was also served on Dr. Judy Keith this day by electronic mail at renewctr@gmail.com.


Damon R. Talley