

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JACKSON ENERGY COOPERATIVE)	
)	
COMPLAINANT)	
)	
V.)	CASE NO.
)	2009-00388
BULLSKIN CABLE A/K/A)	
ONEIDA ENTERPRISES, LLC;)	
JOHN R. BROWN; AND VERNON GAY)	
)	
DEFENDANT)	

O R D E R

On September 21, 2009, Complainant, Jackson Energy Cooperative (“Jackson Energy”), brought this action against Bullskin Cable a/k/a Oneida Enterprises (“Bullskin/Oneida”), John R. Brown, and Vernon Gay (identified in the complaint as the owners/operators of Bullskin/Oneida) (collectively, “Defendants”). Jackson Energy states that the Defendants have notified Jackson Energy that Bullskin/Oneida has ceased to do business and that Bullskin/Oneida has refused to remove its pole attachments despite Jackson Energy’s request to do so.

On September 24, 2009, the Commission’s Division of Filings received a voicemail from a man identifying himself as Vernon Gay. The caller stated that he had removed all of the cable television (“CATV”) equipment referenced in Jackson Energy’s

complaint from its utility poles. However, none of the Defendants has filed a written response to the Complaint with the Commission.

Jackson Energy requests that the Commission issue an Order to the Defendants to (a) remove their remaining CATV attachments from Jackson Energy's poles; (b) provide certificates of insurance for their CATV attachments, naming Jackson Energy as an additional insured until the attachments are removed; and (c) pay for all attachments pursuant to Jackson Energy's tariff until the attachments are removed from its poles.

For the following reasons, the Commission finds that the Complaint filed on September 21, 2009 in the above-styled matter should be dismissed without prejudice.

JURISDICTION

Pursuant to KRS 278.260 the Commission has "original jurisdiction over complaints as to rates or service of any utility" and jurisdiction over complaints "made against any utility" CATV companies such as Bullskin/Oneida are not "utilities" pursuant to KRS 278.010(3). Therefore, they are not utilities under the jurisdiction of the Commission. Rather, CATV companies are customers of the "service" provided by electric and telephone utilities in leasing the extra space on their utility poles for CATV companies to attach their equipment.

The Commission does not have jurisdiction to adjudicate a complaint brought by a jurisdictional utility against a customer for non-compliance with its tariff requirements,¹ whether such non-compliance be nonpayment of a utility bill or, in this case, failure to abide by the provisions of a CATV attachment tariff. However, the Commission does

¹ See Case No. 2008-00086, Application of Blue Grass Energy Cooperative Corporation for an Order Interpreting KRS 278.225 (Ky. PSC Apr. 14, 2008).

have jurisdiction to determine whether the rates charged by jurisdictional utility companies to CATV operators are just and reasonable. Therefore, if the Defendants were to bring a complaint against Jackson Energy disputing the bills that Jackson Energy has proffered to them, the Commission would have jurisdiction to entertain such a complaint. However, until a bill rendered by Jackson Energy to Bullskin/Oneida is disputed and a complaint is filed, the dispute is not ripe for decision by the Commission.²

Jackson Energy is correct that its tariff requires a CATV operator which attaches equipment to its poles to provide Jackson Energy with “satisfactory evidence of contractual insurance coverage,”³ although the tariff also provides that the CATV operator may “furnish a bond” of sufficient value as well. Therefore, the Commission finds that, if Jackson Energy determines that Bullskin/Oneida has failed to comply with the provisions of its CATV attachments tariff, Jackson Energy may, in compliance with its tariff, remove the CATV equipment of the offending company “at the cost and expense of the CATV operator and without being liable for any damage to the CATV operator’s wires, cables, fixtures, or appurtenances.”⁴

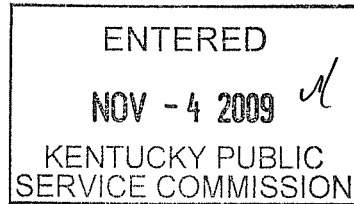
² Id. at 3.

³ Jackson Energy Cooperative Tariff, P.S.C. No. 4, Original Sheet No. 57, effective August 22, 1997.

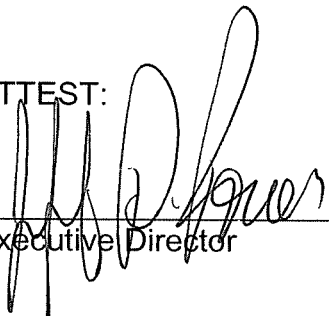
⁴ Id.

IT IS THEREFORE ORDERED that the Complaint filed by Jackson Energy on September 21, 2009 against Defendants, Bullskin/Oneida, John R. Brown, and Vernon Gay, is hereby DISMISSED without prejudice.

By the Commission



ATTEST:



Executive Director

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Vernon Gay
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