

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|--|---|------------|
| JACKSON ENERGY COOPERATIVE CORPORATION |) | |
| |) | |
| COMPLAINANT |) | |
| |) | |
| V. |) | CASE NO. |
| |) | 2009-00391 |
| |) | |
| BOONEVILLE CABLE VISION; FIELDS CABLE VISION; AND JAMES FIELDS |) | |
| |) | |
| DEFENDANT |) | |

O R D E R

On September 21, 2009, Complainant, Jackson Energy Cooperative Corporation (“Jackson Energy”), brought this action against Booneville Cable Vision (“BCV”), Fields Cable Vision (“FCV”), and James Fields (identified in the complaint as the owner/operator of both BCV and FCV) (collectively, “Defendants”). Jackson Energy claims that Defendants have, “for some time,” attached cable television (“CATV”) equipment to its utility poles without providing it a certificate of liability insurance, as required by its CATV attachments tariff. Furthermore, Jackson Energy states that Defendant Fields has notified Jackson Energy that BCV is ceasing to do business. Jackson Energy also states that BCV has refused to pay for the remaining attachments on its utility poles and has also refused to remove those attachments.

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

For the following reasons, the Commission finds that the Complaint filed on September 21, 2009 in this 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 FCV and BCV are not "utilities" pursuant to KRS 278.010(3) and, therefore, they are not under the jurisdiction of the Commission. Rather, CATV companies are customers of the "service" provided by electric and telephone utilities in leasing space on their utility poles for the purpose of attaching CATV equipment thereto.

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

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).

abide by the provisions of a CATV attachment tariff. However, the Commission does have jurisdiction to determine whether the rates charged by jurisdictional utilities to CATV operators are just and reasonable. Accordingly, if the Defendants were to bring a complaint against Jackson Energy disputing the bills that it has proffered to them, the Commission would have jurisdiction to entertain such a complaint. However, until a bill rendered by Jackson Energy to FCV or BCV is disputed and such a complaint is filed, this matter is not subject to the jurisdiction of the Commission.²

Jackson Energy is correct that its tariff requires a CATV operator which attaches equipment to its poles to provide it with “satisfactory evidence of contractual insurance coverage”³ 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 either FCV or BCV has failed to comply with the provisions of its CATV attachments tariff, it 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

IT IS THEREFORE ORDERED that the Complaint filed by Jackson Energy on September 21, 2009 against Defendants, James Fields, BCV, and FCV, is hereby DISMISSED without prejudice.

² Id. at 3.

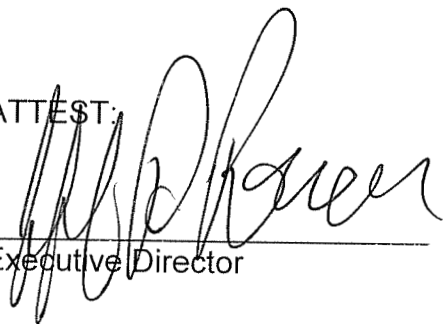
³ Jackson Energy Cooperative Tariff, P.S.C. No. 4, Original Sheet No. 57, effective August 22, 1997.

⁴ Id.

By the Commission

ENTERED
NOV - 2 2009 *M*
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

James Fields
Booneville Cable Vision
P.O. Box 237
Combs, KY 41729

Clayton O Oswald
Taylor, Keller & Dunaway & Tooms Attorneys At
1306 West Fifth Street
Post Office Box 905
London, KY 40743-0905