

protection of substantial rights. The matter now stands submitted for a decision based on the evidentiary record.

For the reasons stated below, the Commission finds that the complaint should be dismissed in its entirety.

FACTUAL BACKGROUND

Pursuant to Mr. Brown's request, KU removed Mr. Brown's home account¹ from budget billing on September 4, 2009. Mr. Brown's September budget bill, which was due on September 8, 2009, amounted to \$189.00. At the time Mr. Brown was taken off budget billing, KU inaccurately advised him that his account had a credit balance of \$78.96. Mr. Brown then made a payment of \$23.84 to satisfy what he believed to be the amount owed to keep the account current.

Mr. Brown subsequently received a brown bill from KU, indicating that his account was past due and subject to disconnection if full payment was not received by September 24, 2009. After Mr. Brown contacted KU regarding the disconnection notice, KU discovered and informed Mr. Brown that he, in fact, did not have a credit in his accumulated balance. KU advised Mr. Brown that he would only have a credit had he paid the \$189.00 bill that was due on September 8, 2009. KU stated that it explained to Mr. Brown the actual amount needed to be paid and that the last conversation the company had with Mr. Brown prior to disconnection was on September 17, 2009. At that point, KU considered the internal complaint to be closed because during Mr. Brown's call related to the potential disconnection, the correct amount due in order to avoid disconnection had been provided to Mr. Brown.

¹ Mr. Brown also has an account for his garage, which had previously been removed from budget billing at his request on July 10, 2009.

After receiving no payment from Mr. Brown on September 24, 2009, KU disconnected service to his home on September 25, 2009 at 2:22 p.m. Immediately upon learning of the disconnection, Mr. Brown contacted KU concerning his account balance and his internal complaint was reopened. When it became clear that a dispute was still pending, KU reconnected service to Mr. Brown's home on the same day at approximately 6:50 p.m. KU also credited back to Mr. Brown's account the late payment charge associated with the September 2009 payment.

DISCUSSION

The Commission is without jurisdiction to require KU to make personnel changes or to award compensatory damages. Pursuant to KRS 278.040, the Commission has jurisdiction of the "rates" and "services" of utilities as defined by KRS 278.010. Mr. Brown's requests for personnel changes and compensatory damages fall under neither category.

Likewise, in Carr v. Cincinnati Bell, Inc.,² a customer brought an action in Kenton Circuit Court seeking, among other things, compensatory damages for tortious breach of contract for telephone service. Holding that the Commission had exclusive jurisdiction over the matter, the circuit court dismissed the suit. Reversing the circuit court's opinion on this issue, the Court said:

[A]ppellant seeks damages for breach of contract. 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

² Carr v. Cincinnati Bell, Inc., 651 S.W.2d 126 (Ky. App. 1983).

with constitutional requirement. Kentucky Constitution Sec. 14.³

Accordingly, the granting of the requested personnel changes and damages is outside the Commission's jurisdiction.

With respect to Mr. Brown's request for the levying of a fine against KU, KRS 278.990 provides that a utility shall be subject to a civil penalty for willful violations of any of the provisions of KRS Chapter 278 or any regulation promulgated by the Commission. A willful violation reflects an act that is intentional and knowing rather than accidental.⁴ The term "willful" does not necessarily and solely entail an "intention to do wrong and inflict injury," but may include conduct which reflects "an indifference . . . to [its] natural consequences."⁵

The Commission finds that KU's actions in this matter do not rise to the level of willfulness. At worst, KU's failure to provide Mr. Brown with an accurate account balance on September 4, 2009 and the temporary disconnection of Mr. Brown's service could be characterized as negligence. The evidence indicates that KU attempted to clarify the matter with Mr. Brown and that KU immediately reconnected service to Mr. Brown's residence upon learning that Mr. Brown was still disputing the amount owed in the disconnection notice.

The Commission will note that, during a September 16, 2009 call Mr. Brown made to KU's call center, Mr. Brown made repeated requests to the call center

³ Id. at 128.

⁴ Case No. 2006-00558, Airview Utilities, LLC, and Martin Cogan and Larry Smither in Their Individual and Official Capacities Alleged Failure to Comply with the Commission's Order of April 28, 2005 in Case No. 2005-00022 (Ky. PSC Apr. 2, 2009).

⁵ Huddleston v. Hughes, 843 S.W.2d 901, 905 (Ky. App. 1992)

representative for the Commission's telephone number. The call center representative failed to provide that information, stating that she did not have the Commission's contact information.

807 KAR 5:006, Section 9 states that "[i]f a telephonic complaint is not resolved, the utility shall provide at least oral notice to the complainant of his right to file a complaint with the commission and the address and telephone number of the commission." KU acknowledged that the call center representative should have provided Mr. Brown with the Commission's telephone number as requested. KU stated that each new customer service representative is trained to provide the Commission's telephone number, if requested. KU further stated that the call center representative will be coached on the proper procedures for providing this information in the future.

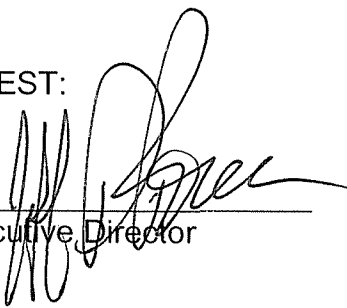
In light of KU's training processes for new customer service representatives and the remedial measures provided by KU relating to compliance towards 807 KAR 5:006, Section 9, the Commission finds that the imposition of a civil penalty is not warranted.

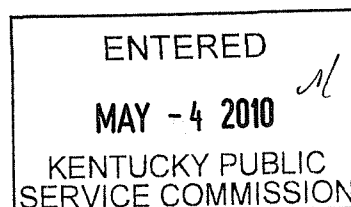
Finding that Mr. Brown has failed to state a claim upon which relief may be granted, the Commission will dismiss the complaint.

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

By the Commission

ATTEST:


Executive Director



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