

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

STUART I. GROSS, SR.)	
)	
COMPLAINANT)	
)	
V.)	CASE NO.
)	2019-000258
GREEN RIVER VALLEY WATER DISTRICT)	
)	
DEFENDANT)	

ORDER

This matter arises upon a complaint filed by Stuart Gross, Sr. against Green River Valley Water District (Green River Valley District). Mr. Gross alleged Green River Valley was providing service at a low per square inch gauge (pgsi) to his property located at 2931 Baumgardner Road, Bonnieville, Kentucky. Mr. Gross requested his property be serviced at the pgsi required by regulation, his property be restored to its original condition, and reimbursement for expenses incurred while the water pressure was low.

LEGAL STANDARD AND JURISDICTION

Commission regulation 807 KAR 5:006, Section 5(1), provides that the pressure at a customer's service pipe shall not fall below 30 psig under normal conditions. The Commission has jurisdiction over the rates and service of public utilities.¹ Mr. Gross's complaint involves the water pressure at his service pipe falling below the water pressure required by the regulation. As this issue is a matter of the service offered by a utility, the

¹ KRS 278.260.

Commission has jurisdiction to hear the complaint. However, in fixing a remedy for any substantiated complaint, the Commission is limited by the terms and conditions set forth in the utility's tariff. No provision of KRS Chapter 278 confers upon the Commission the authority to award damages, and the Kentucky courts have refused to extend the Commission's jurisdiction to include monetary damage claims. 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, Kenton Circuit Court dismissed the suit. Reversing the Circuit Court's opinion on this issue, the Court of Appeals 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 with constitutional requirement. Kentucky Constitution Section 14.³

The Commission has jurisdiction to hear Mr. Gross's complaint and the authority to order Green River Valley District to comply with applicable regulations, but the Commission cannot award damages to Mr. Gross to compensate him for expenses he incurred while awaiting Green River Valley District's completion of construction to remedy the water pressure problem.

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

³ *Id.* at 128.

BACKGROUND

Mr. Gross has resided at 2931 Baumgardner Road, Bonnieville, Kentucky, since 2016. Since that time, he has received water service from Green River Valley District. Mr. Gross stated that since he began service, he has had very low water pressure at the property.⁴ In the winter of 2016, the water pressure at the property fell to zero.⁵ Mr. Gross contacted Green River Valley District and worked with the utility to fix the water pressure issue. A Green River Valley District employee told Mr. Gross it would take over a year to make structural repairs to the water lines to have adequate pressure. Green River Valley District suggested using an individual pump instead of making structural changes to its water lines. The pump was installed in August 2017.⁶

In April 2019, the individual pump failed. Mr. Gross contacted Green River Valley District and was informed that Green River Valley District installed the pump but would not be responsible for maintaining or fixing the pump.⁷ Mr. Gross then purchased a new pump.⁸ Mr. Gross filed a complaint about the water pressure at his residence on June 11, 2019.⁹

Green River Valley District acknowledged the water pressure at Mr. Gross' residence was below 30 psig.¹⁰ Green River Valley District proposed to satisfy the

⁴ Gross Complaint at unnumbered page 3.

⁵ *Id.* at unnumbered page 4.

⁶ *Id.*

⁷ *Id.* and Green River Valley District's Response to Commission Order at 1.

⁸ Stuart I. Gross, Sr. Status Report Pursuant to Commission Order at unnumbered page 2.

⁹ Gross Complaint at unnumbered page 1.

¹⁰ Green River Valley District Response to Commission Order at 1.

complaint by new tariff provisions. Green River Valley District filed a new tariff provision that would place the maintenance of individual pumps on the customer if water pressure could not be maintained above 30 psig.¹¹ The Commission established Case No. 2020-00026 to review the new proposed tariff provision by Green River Valley District. The Commission rejected the proposed tariff and Green River Valley District then submitted new tariff provisions that required the utility to install and maintain individual pumps if the water pressure at the customers location is below 30 psig.¹²

At the conclusion of 2020-00026, Green River Valley District offered a settlement to Mr. Gross. Green River Valley District proposed to construct a new two-mile water main that connected to Edmonson County Water District's distribution line that was fed by a water storage tank in Kessinger, Kentucky. This storage tank would gravity feed into the water main and provide service of 85 psig at Mr. Gross's residence. The new water main would also serve six other residences on Baumgardner Road.¹³

On April 26, 2021, the new water main went into service. Green River Valley District monitored water pressure with pressure readers and measured 85 psig at Mr. Gross's residence.¹⁴ On May 4, 2021, Green River Valley District filed a motion to dismiss. The motion stated that Mr. Gross's complaint had been satisfied. On May 13, 2021, the Commission issued an Order requiring Mr. Gross to file a status report. Mr. Gross filed the status reports on June 10, 2021, and June 25, 2021. In the status

¹¹ Green River Valley Water District's Response to Commission Order at 1.

¹² See Case No. 2020-00026, *Electronic Proposed Filing of Green River Valley Water District to Amend Its Tariff*.

¹³ Green River Valley Water District's Offer of Settlement at 1–2.

¹⁴ Green River Valley District's Response to Commission Staff Request for Information, (filed Dec. 7, 2021), Item 1.

reports Mr. Gross indicates the water main has been working except for two instances.¹⁵ The water main was repaired in a timely manner. Mr. Gross then requested the Complaint not be dismissed because he wanted to gather information about reimbursement expenses for items he had to buy or replace while he had no water pressure at his residence.¹⁶ Mr. Gross also requested his property be returned to the condition it was in before the first individual pump was installed.¹⁷

Green River Valley District stated the property was restored to its original condition, except for the original individual pump. Green River Valley District will remove the pump and dispose of it pursuant to Mr. Gross' directive.¹⁸ Green River Valley District noted there had been no calls regarding issues with service since June 24, 2021.¹⁹

DISCUSSION AND FINDINGS

Commission regulation 807 KAR 5:006, Section 5(1), addresses the water pressure requirements for utilities. Specifically, the regulation states that under normal conditions the water pressure to a customer must not fall below 30 psig. Both Green River Valley District and Mr. Gross agree that the water pressure at his residence was lower than 30 psig. Green River Valley District attempted to correct this with an individual pump, but ultimately had to construct a new water main. Now that the new water main is

¹⁵ Stuart I. Gross, Sr. Status Report pursuant to Commission Order, at unnumbered page 1–2, and Stuart I. Gross, Sr. Additional Findings, at 1–2.

¹⁶ Stuart I. Gross, Sr. Status Report pursuant to Commission Order, at unnumbered pages 3–29, and Stuart I. Gross, Sr. Additional Findings, at 2–4.

¹⁷ Stuart I. Gross, Sr. Additional Findings.

¹⁸ Green River Valley Water District Response to Commission Staff Request for Information (filed Dec. 7, 2021), Item 2.

¹⁹ *Id.*, Item 3.

in service, both parties agree that Mr. Gross has water pressure at his home above 30 psig. Green River Valley District has used pressure readers and confirmed Mr. Gross now has water pressure of 85 psig.²⁰

Regarding reimbursement for expenses incurred while the water pressure was below 30 psig, the Commission does not have statutory authority to award damages, as this falls outside the regulation of rates and services. The Kentucky courts have declined to extend the Commission's jurisdiction to include monetary damages.²¹

Having considered the complaint, and being otherwise sufficiently advised, the Commission finds that the only relief it has authority to award has already been received, and therefore the motion to dismiss the complaint should be granted. Further the Commission finds it lacks the jurisdiction to grant the additional relief Mr. Gross requested. The complaint is dismissed and removed from the Commission's docket.

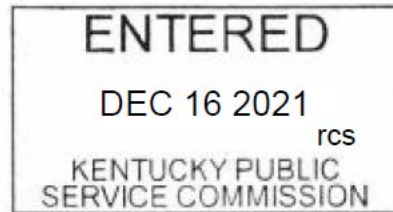
IT IS THEREFORE ORDERED that:

1. Green River Valley District's motion to dismiss the complaint is granted.
2. The case is closed and removed from the Commission's docket.

²⁰ Green River Valley District Response to Commission Staff Request for Information (filed Dec. 7, 2021), Item 1.

²¹ See *Boone County Sand and Gravel Company v. Owen County Rural Electric Cooperative Corporation*, 779 S.W.2d 224 (Ky. App. 1989) and *Carr v. Cincinnati Bell, Inc.*, 651 S.W.2d 126 (Ky. App. 1983).

By the Commission



ATTEST:


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