



requires the Commission to examine the complaint to ascertain if the complaint establishes a *prima facie* case that the utility has violated a statute, regulation, tariff, or order for which the Commission may grant relief.<sup>3</sup> A complaint establishes a *prima facie* case when, on its face, it states sufficient allegations that, if uncontroverted by other evidence, would entitle the complainant to the relief requested.<sup>4</sup> If the Commission determines that the complaint does not establish a *prima facie* case, then the Commission affords the complainant the opportunity to amend the complaint within a specified time.

Having reviewed the Browns' complaint, the Commission finds that the Browns have established a *prima facie* case that KU has violated a statute, regulation, tariff, or order for which the Commission may grant some relief, albeit not all of the requested relief. In regards to the requirement in KRS 278.030(2) that "[e]very utility shall furnish adequate, efficient and reasonable service. . . ." The Commission directs the parties to KRS 278.018(3) regarding the circumstances under which Owen Electric may be permitted to serve the Browns' property:

The commission may, after a hearing had upon due notice, make such findings as may be supported by proof as to whether any retail electric supplier operating in a certified territory is rendering or proposes to render adequate service to an electric-consuming facility and in the event the commission finds that such retail electric supplier is not rendering or does not propose to render adequate service, the commission may enter an order specifying in what particulars such retail electric supplier has failed to render or propose to render adequate service and order that such failure be corrected within a reasonable time, such time to be fixed in such order. If the retail electric supplier so ordered to correct such failure fails to comply with such order, the commission

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<sup>3</sup> 807 KAR 5:001, Section 20(4)(a).

<sup>4</sup> See Case No. 96-014, *Fogle v. Taylor County Rural Electric Cooperative Corporation* (Ky. PSC Feb. 23, 1996), Order at 1.

may authorize another retail electric supplier to furnish retail electric service to such facility.

However, the Commission denies the portion of the complaint requesting relief in the form of damages. Kentucky courts have long held that the Commission lacks the statutory authority to award monetary damages to individual utility customers. In *Carr v. Cincinnati Bell, Inc.*, the Kentucky Court of Appeals stated, “[n]owhere 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 requirements.”<sup>5</sup> Consistent with statutory and case law, only Kentucky district or circuit courts, and not the Commission, can award monetary damages sought by the Browns.

IT IS HEREBY ORDERED that:

1. Pursuant to 807 KAR 5:001, Section 20, KU is ordered to satisfy the matters complained of or file a written answer to the complaint within ten days from the date of entry of this Order. The Commission directs KU to the Commission’s July 22, 2021 Order in Case No. 2020-00085<sup>6</sup> regarding filings with the Commission. In the Commission’s March 16, 2020 Order in Case No. 2020-00085,<sup>7</sup> the Commission provides instructions for filings in non-electronic cases, insofar that parties of non-electronic cases may file one original document with no copies, or send an electronic mail message with an electronic copy of the document to the Commission and to parties to the matter. Any electronic

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<sup>5</sup> See *Carr v. Cincinnati Bell*, 651 S.W.2d 126 (Ky. App. 1983).

<sup>6</sup> Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC July 22, 2021), Order (in which the Commission mandated the use of the electronic filing procedures found in 807 KAR 5:001, Section 8, except for *pro se* formal complaints filed against utilities).

<sup>7</sup> Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC Mar. 16, 2020), Order at 5–6.

email filed in this manner should be sent to [PSCED@ky.gov](mailto:PSCED@ky.gov), and each message should include the case number in the subject line of the message and a read receipt to ensure the Commission received the message and documents. A party filing a paper containing personal information shall, in accordance with 807 KAR 5:001, Section 4(10), encrypt or redact the paper so that personal information cannot be read.

2. A copy of this Order shall be served upon the Browns by U.S. mail to 243 Vera Cruz Lane, Sparta, Kentucky 41086 and shall be served upon counsel for the Browns at the email address provided by counsel John Wright in the complaint.

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PUBLIC SERVICE COMMISSION

  
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Chairman

  
\_\_\_\_\_  
Vice Chairman

  
\_\_\_\_\_  
Commissioner



ATTEST:

  
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Executive Director

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