

Horner property, adjacent to the Futrell properties.¹ In its complaint, Futrell alleged that the water service lines, and the meter associated with the Horner property, intersected Futrell property without an easement or right-of-way. Futrell alleged that it approached Barkley Lake District in June 2022 to request that the Horner property meter be moved.² Futrell stated that while Barkley Lake District never formally responded to Futrell's request, Barkley Lake District relocated the meter.³ However, Futrell alleged that the meter's new location was also on property which Futrell owned.⁴

Futrell stated that, on September 16, 2022, it initiated litigation in Trigg County Circuit Court, Trigg County, Kentucky, against the owners of the Horner property, "seeking, among other things, injunctive relief requiring them to remove the [s]ervice [l]ines from [Futrell]'s property[.]"⁵ Futrell further stated that on September 20, 2022, and September 27, 2022, representatives for Barkley Lake District and Futrell met to discuss issues related to the meter and service lines used to provide service to the Horner property.⁶ Futrell alleged that, during the September 27, 2022 meeting, the two parties entered into an oral agreement in which Barkley Lake District agreed that it "would not provide water to the [s]ervice [l]ines pending the outcome of the [Circuit Court litigation]."⁷

¹ Complaint at paragraph 8.

² Complaint at paragraph 11.

³ Complaint at paragraph 12.

⁴ Complaint at paragraph 12.

⁵ Complaint at paragraph 13.

⁶ Complaint at paragraphs 14-15.

⁷ Complaint at paragraph 16.

Futrell stated that Barkley Lake District confirmed the oral agreement in an email dated September 27, 2022, which Futrell indicated was attached as Exhibit A to the complaint.⁸

Futrell alleged that Barkley Lake District breached the terms of its September 27, 2022, agreement by supplying water to the Horner property. Futrell also claimed that Barkley Lake District was violating 807 KAR 5:066, Section 9(3), requiring pipes to be inspected prior to being connected to the meter; as well as 807 KAR 5:066, Section 10(2), requiring service lines not to exceed a certain length without Commission approval. Futrell's complaint requests that the Commission order Barkley Lake District to stop serving the Horner property and to initiate an investigation into Barkley Lake District's alleged violations relating to the installation and operation of the pipes serving the Horner Property.

LEGAL STANDARD

Section 20(1) of 807 KAR 5:001 governs the content of all formal complaints and requires that Complainants state:

(c) Fully, clearly, and with reasonable certainty, the act or omission, of which complaint is made, with a reference, if practicable, to the law, order, or administrative regulation, of which a failure to comply is alleged, and other matters, or facts, if any, as necessary to acquaint the commission fully with the details of the alleged failure; and

(d) The relief sought.

Additionally, 807 KAR 5:001, Section 20(4)(a-b) provides the following:

(4) Procedure on filing of complaint.

(a) Upon the filing of a complaint, the commission shall immediately examine the complaint to ascertain if it

⁸ Complaint at paragraph 17, Exhibit A.

establishes a prima facie case and conforms to this administrative regulation.

1. If the commission finds that the complaint does not establish a prima facie case or does not conform to this administrative regulation, the commission shall notify the complainant and provide the complainant an opportunity to amend the complaint within a specified time.

2. If the complaint is not amended within the time or the extension as the commission, for good cause shown, shall grant, the complaint shall be dismissed.

(b) If the complaint, either as originally filed or as amended, establishes a prima facie case and conforms to this administrative regulation, the commission shall serve an order upon the person complained of, accompanied by a copy of the complaint, directed to the person complained of and requiring that the matter complained of be satisfied, or that the complaint be answered in writing within ten (10) days from the date of service of the order, provided that the commission may require the answer to be filed within a shorter period if the complaint involves an emergency situation or otherwise would be detrimental to the public interest.

Stated plainly, to be accepted by the Commission, complaints must both establish a *prima facie* case and meet the requirements of 807 KAR 5:001, Section 20(1)(c). The Commission has most often described *prima facie* as occurring “when on its face, [the complaint] states sufficient allegations that, if uncontroverted by other evidence, would entitle the complainant the relief requested.” The *prima facie* requirement is not satisfied unless the complaint is accompanied with supporting evidence. Interrelatedly, 807 KAR 5:001, Section 20(1)(c) requires sufficient supporting facts to fully acquaint the Commission with the alleged failure and the relief sought. If the complainant fails to establish either prong, then the complainant will be notified by the Commission and provided the opportunity to amend the complaint.

Because a *prima facie* case requires sufficient allegations to entitle a complainant to the relief requested, its fundamental operation is inextricably intertwined with traditional principles of constitutional standing. In Kentucky, as in the federal courts, a party's standing is predicated on establishing all three elements of: (1) an injury; (2) causation; and (3) redressability.⁹ Stated differently, the "injury must be fairly traceable to the challenged action, and relief from the injury must be likely to follow from a favorable decision."¹⁰ While not sufficient on its own, establishing standing is necessary for a successful *prima facie* complaint before the Commission.

In administrative settings, both redressability and injury are limited by the jurisdictional authority given agencies by the legislature. For example, the Commission's jurisdiction is established in KRS 278.040(2) and states that the Commission has "exclusive jurisdiction over the regulation of rates and service of utilities[.]"¹¹ While expansive in scope with regards to ensuring "fair, just and reasonable"¹² service, the Commission's authority is not limitless.

Regarding complaints, the Commission's authority is derived from KRS 278.260¹³ which states that:

⁹ *Commonwealth Cabinet for Health and Family Services v. Sexton, et al.*, 566 S.W.3d 185, 196 (Ky. 2018).

¹⁰ *Commonwealth Cabinet for Health and Family Services v. Sexton, et al.*, 566 S.W.3d 185, 196 (Ky. 2018) (internal quotations omitted).

¹¹ Indeed, the Commission's authority regarding ratemaking is both "plenary" and broad. See e.g. *Kentucky Public Service Com'n v. Com. ex rel. Conway*, 324 S.W.3d 373 (Ky. 2010).

¹² KRS 278.040.

¹³ The Commission is also tasked with enforcing Kentucky's Underground Facility Damage Prevention laws (known colloquially as 811) and KRS 367.4917 provides the scope of the Commission's authority, stating that: "[t]he commission shall have statewide authority to enforce and assess civil penalties provided for in this section and to seek injunctive relief for any violation that results in damage to an

[t]he commission shall have original jurisdiction over complaints as to rates or service of any utility, and upon a complaint in writing made against any utility by any person that any rate which the complainant is directly interested is unreasonable or unjustly discriminatory, or that any regulation, measurement, practice or act affecting or relating to the service of the utility or any service in connection therewith is unreasonable, unsafe, insufficient, or unjustly discriminatory, or that any service is inadequate or cannot be obtained[.]

As KRS 278.260 makes clear, complaints must be related, in some causal way, to the Commission's jurisdiction over rates and service. In this case, Futrell is not alleging any rate violations, so its complaint must show that a service provided by the utility is "unreasonable, unsafe, insufficient, or unjustly discriminatory, or [inadequate]."

DISCUSSION AND FINDINGS

Futrell's Complaint is deeply flawed. Futrell's fundamental factual assertions are that the water service lines¹⁴ and the meter operated by Barkley District to service the Horner property intersected, without an easement or right-of-way, Futrell's property; and that Barkley District breached the terms of an apparent verbal agreement with Futrell to stop service to the Horner property. While the Commission makes no statement regarding the actionability of the facts presented, these facts are far removed from the jurisdiction created by KRS 278.260 and sound in tort and contract law, beyond the Commission's competency to adjudicate.

With regards to the Commission's jurisdiction, Futrell has categorically failed to present a cognizable injury or state a causal relationship between the supposed harm

underground facility used to transport gas or hazardous liquid subject to the federal pipeline safety laws, 49 U.S.C. secs. 60101 et seq."

¹⁴ Futrell's Complaint appears to make no statement regarding whether Barkley District or the owners of the Horner property own the water service line.

and Barkley District. Futrell does not allege a failure or otherwise inadequate service. It makes no claims regarding billing practices, and indeed it would be impossible for Futrell to make allegations regarding service or billing practices as Futrell is not the party receiving service; the Horner family is. In essence, Futrell is requesting that the Commission, on its behalf, order a utility to stop water service to an unrepresented third-party because of a property dispute. Stated differently, the cessation of service to a Barkley District customer is unlikely to resolve Futrell's complaint and is not likely to be in the public interest.

Moreover, Futrell's Complaint is not only deficient with regards to the injury and causation prongs of standing, its requested relief before the Commission would also not give it redress to the injury. In its complaint, Futrell is requesting, among other items, that the Commission order "[Barkley District] to immediately cease providing water through the Service Lines" and that the Commission initiate "an investigation. . . into [Barkley District's] violations of Kentucky statutes and/or regulations in relation to the Service Lines[.]" Crucially, under the facts presented, even if the Commission were to order the ceasing of service, the fundamental injury, the presence of service lines, would not be resolved. The lines would remain, all that would change was whether Barkley District pumped water through them. Consequently, Futrell has failed to allege an injury within the scope of the Commission's jurisdiction and has not requested a remedy that would resolve the company's alleged harm.

However, even if the Commission accepted Futrell's Complaint at face value, the company's Complaint would still fail to establish a *prima facie* case.

As an initial matter, 807 KAR 5:006, Section 6(3)(a), establishes that obtaining easements and rights-of-ways are the responsibility of the utility; and 807 KAR 5:006, Section 6(3)(b), forbids a utility from:

1. Requir[ing] a prospective customer to obtain easements or rights-of-way on property not owned by the prospective customer as a condition for providing service; or

2. Refus[ing] to provide service to a prospective or existing customer on the basis of that customer's refusal to grant an easement for facilities that do not serve the customer.

This language is clear, the burden for obtaining easements rests with the utility and not the customer. This burden is appropriately placed on the utility because, as the Commission has explained in prior cases, water utilities “have the power of eminent domain[]” and “can thus obtain an easement from an obstinate landowner where an individual applicant cannot.”¹⁵ In this case, the Horner property owners were not obligated to secure easements prior to requesting service, and Barkley Lake District was forbidden from conditioning its service on the owners of the Horner property’s success regarding obtaining such an easement or right-of-way. Consequently, Futrell’s allegations regarding easements are insufficient to support this complaint.¹⁶

Futrell’s remaining allegations must also be rejected. Administrative regulation 807 KAR 5:001, Section 20(1)(c) requires complainants to state “[f]ully, clearly, and with reasonable certainty, the act or omission . . . as necessary to acquaint the commission

¹⁵ Case No. 2011-00198, *In the Matter of: Proposed Revisions to Jessamine-South Elkhorn Water District’s Rules Regarding the Provision of Sewer Service* (Ky. PSC March 2, 2012) Order at 3.

¹⁶ See Case No. 2022-00133, *In the Matter of: Biofuel Mining, Inc. v. Kentucky Power Company*, (Ky. PSC May 6, 2022), Order at 6 (in which the Commission rejected a complaint for failing to establish a prima facie case when the complainant’s evidence actually showed that the utility had acted in accordance with its approved tariff).

fully with the details of the alleged failure[.]” Specifically, Futrell’s allegations in the Complaint failed to provide any supporting documentation that the pipes serving the Horner property were not adequately inspected prior to being placed in service. Futrell’s allegations involving the length of the pipe exceeding the maximum allowed by regulation are likewise without any supporting documentation.¹⁷ Finally, the Commission is compelled to note that the mere act of requesting the Commission to impose a penalty on a utility or a customer does not itself establish a *prima facie* case.

Based on the above discussion, the Commission finds that Futrell failed to present a *prima facie* case and that it did not comply with 807 KAR 5:001, Section 20. In accordance with 807 KAR 5:001, Section 20(4)(a)(1), the Commission will provide Futrell an opportunity to amend its complaint to address these deficiencies.

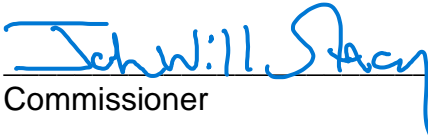
IT IS THEREFORE ORDERED that:

1. Futrell’s complaint is rejected for failing to state a *prima facie* case and failing to conform to the requirements of 807 KAR 5:001, Section 20(1)(c).
2. Futrell shall have 20 days from the service date of this Order to file an amended complaint with the Commission that conforms to the requirements of 807 KAR 5:001, Section 20(1)(c), and which states a *prima facie* case.
3. If Futrell does not file an amended complaint within 20 days of the date of this Order, its complaint shall be dismissed without prejudice and removed from the Commission’s docket.

¹⁷ The Commission also notes that even if the line extension complaint was valid, it would not justify the utility stopping service since the central issue governing line extensions concern cost allocation. Therefore, Futrell would not be entitled to the relief it requests in this complaint.

PUBLIC SERVICE COMMISSION


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