

JOHN N. HUGHES

Attorney at Law
7106 Frankfort Rd.
Versailles, KY 40383

Telephone: (502) 223-7033

Email: jnhughes@johnnhughespsc.com

RECEIVED

April 8, 2024

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PUBLIC SERVICE
COMMISSION

Linda C. Bridwell
PSC Executive Director
Public Service Commission
211 Sower Blvd.
Frankfort, KY 40601

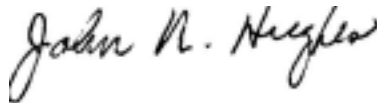
Re: Case No. 2023-00052

Dear Ms. Bridwell:

Natural Energy Utility Corporation submits its Response to Motion. I certify that the electronic documents are true and correct copies of the original documents. A copy of the response has been mailed to Philip Whitley, 14402 Dearhaven Court, Rush, KY 41168 and John Thompson, Attorney, 144 E. Main St. Grayson, KY 41143.

If you have any questions about this filing, please contact me.

Submitted By:



John N. Hughes

Attorney for NEUC

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PHILIP W. WHITLEY

COMPLAINANT

Case No. 2023-00052

V.

NATURAL ENERGY UTILITY CORPORATION

DEFENDANT

RESPONSE TO MOTION

Natural Energy Utility Corporation (NEUC), by counsel, submits its response to the motion for damages filed on April 2, 2024.

KRS 278.260 grants the Commission original jurisdiction over complaints as to rates or service of any utility. No provision of KRS Chapter 278 confers upon the Commission the authority to award damages. Kentucky courts have refused to extend the Commission's jurisdiction to include monetary damage claims. In Carr v. Cincinnati Bell, Inc., 651 S.W.2d 126 (Ky. App. 1983), a customer brought an action in Kenton Circuit Court seeking, among other things, compensatory damages for tortious breach of contract for telephone service. 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 14.4

The Commission has consistently recognized this limitation on its jurisdiction.

While exercising jurisdiction over service complaints, the Commission's authority is limited to determining "the just, reasonable, safe, proper, adequate or sufficient rules, regulations, practices, equipment, appliances, facilities, service or methods to be observed, furnished, constructed, enforced or employed, and ... fix[ing] the same by its order, rule or regulation ." It does not possess the authority to award compensatory or punitive damages. *Jeffrey And Christy Vice v. Fleming-Mason Energy Cooperative, Inc.* Case No. 2013-00010 p. 8, July 24, 2015.

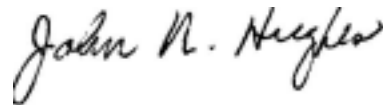
In a case seeking damages for delayed service, just as the Motion in this case, the Commission said:

... 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. *Stuart I. Gross, Sr. v. Green River Valley Water District*, Case No. 2019-000258. p. 2, December 16, 2021.

The damages the Complainant in this case seeks are similar to those in the Green River Valley Water District case.

Based on the decisions of the Kentucky courts and the Commission's long standing recognition that it cannot award damages, the motion should be denied.

Submitted by:



John N. Hughes
Attorney at Law
7106 Frankfort Rd.
Versailles. KY 40383
502 223 7033
jnhughes@johnnhughespsc.com

Certification:

I certify that a copy of this Response has been mailed to Philip Whitley, 14402 Dearhaven Court, Rush, KY 41168, and John Thompson, 144 E. Main St. Grayson, KY 41143 the 8th day of April, 2024.

John N. Hughes