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November 14, 2023

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VIA UPS OVERNIGHT DELIVERY

Public Service Commission
211 Sower Boulevard
Frankfort, KY 40602

RECEIVED

NOV 15 2023

RE: *Futrell Holding Co., LLC v. Barkley Lake Water District*
Formal Complaint

PUBLIC SERVICE
COMMISSION

Dear Sir or Madam:

Enclosed is the original and ten (10) copies of the Formal Complaint in the above action.

Please contact me immediately if you require additional information.

Very truly yours,

STITES & HARBISON PLLC



Corey J. Dunn

CJD/do
Enclosures

1597077:1

Commonwealth of Kentucky
Before the Public Service Commission

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NOV 15 2023

IN THE MATTER OF :)
)
Futrell Holding Co., LLC,)
Complainant)
v.)
)
Barkley Lake Water District,)
Defendant)
)

PUBLIC SERVICE
COMMISSION

COMPLAINT

Introduction

1. Futrell Holding Co., LLC (“FHC”) respectfully requests that the Public Service Commission of Kentucky (“Commission”) exercise its authority pursuant to KRS 278.040, KRS 278.260(1), and KRS 278.280 to initiate an investigation into Barkley Lake Water District’s (“BLWD”) violations of Kentucky statutes and/or regulations, including, but not limited to 807 KAR 5:066. FHC further requests that the Commission issue an order requiring BLWD to immediately cease providing water service in a manner that violates Kentucky law and FHC’s property rights.

Parties

2. FHC is a limited liability company organized under the laws of the Commonwealth of Kentucky, with its principal office located at 50 Main Street, P.O. Box 631, Cadiz, Kentucky.

3. Barkley Lake Water District is a regional water district providing water service in Trigg County in the Commonwealth of Kentucky, operating under a tariff issued by the Commission.

Jurisdiction

4. The Commission has original jurisdiction over complaints as to service provided by any utility, including BLWD. *Bulldog's Enterprises, Inc. v. Duke Energy*, 412 S.W.3d 210, 211 (Ky. Ct. App. 2013); KRS 278.260(1).

5. Further, jurisdiction is proper pursuant to KRS 278.280(1), which provides that upon receiving a complaint, the Commission "shall determine 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 shall fix the same by its order, rule or regulation."

6. This Complaint relates to the "services" provided by BLWD, as defined in KRS 278.010(13).

Factual Allegations

7. FHC owns certain real property located in Trigg County, Kentucky, and more specifically described as the Lakeway Shores Subdivision ("**Lakeway Shores**"). Futrell also owns other real property located in Trigg County, and more specifically described as PVA Parcel Numbers 15-009 and 15-016 (the "**Wesvaco Property**" and together with Lakeway Shores, the "**FHC Property**").

8. BLWD provides water service to a parcel of real property located adjacent to the FHC Property, and which is commonly referred to as 426 Anonymous Road, Cadiz, Kentucky 42211 (the "**Horner Property**").

9. The water service lines (“Service Lines”) through which BLWD provides water service to the Horner Property encroach on FHC’s property, which is located between BLWD’s water meter (“Meter”) and the Horner Property.

10. BLWD placed the Meter on the FHC Property, without an easement and without FHC’s consent.

11. In June, 2022, FHC contacted BLWD and requested that it remove the Meter because it was located on FHC’s property. The grounds for FHC’s request were that BLWD did not have an easement allowing it to place the Meter on FHC’s property, and no easement existed for the Service Lines which were connected to the meter.

12. BLWD failed to provide a substantive response to FHC’s request. Rather, BLWD, without providing notice to FHC, relocated the Meter to another parcel of property owned by FHC.

13. On September 16, 2022, FHC initiated legal proceedings in the Trigg Circuit Court against the owners of the Horner Property, seeking, among other things, injunctive relief requiring them to remove the Service Lines from FHC’s property (the “Litigation”).

14. On September 20, 2022, and again on September 27, 2022, FHC’s managing member met with BLWD manager, John Herring, to discuss issues relating to the Meter and Service Lines.

15. In the course of his discussions with FHC, Mr. Herring represented that BLWD’s policy is to require customers to demonstrate that their service lines are not encroaching on land owned by others before BLWD will provide water service.

16. Furthermore, during the September 27 meeting, Mr. Herring, on behalf of BLWD, entered into an oral agreement with FHC, pursuant to which BLWD agreed it would not provide water to the Service Lines pending the outcome of the Litigation.

17. BLWD confirmed its agreement with FHC through a September 27, 2022 email from its legal counsel which provided in pertinent part that "BLWD will not move forward to provide water to Ms. Horner. . . as long as your lawsuit with Ms. Horner is pending." A copy of the September 27, 2022 email is attached as Exhibit A.

18. BLWD subsequently breached its agreement with FHC when it began supplying water to the Horner Property through the Service Lines, which lie on FHC's property.

19. In addition to violating its express agreement with FHC, BLWD's actions also violate Kentucky law. First, BLWD violated 807 KAR 5:066(9)(3), which provides:

In the installation of the service line, the utility shall require the customer to leave the trench open and pipe uncovered, and the utility shall inspect the line to determine it is free from any tee, branch connection, irregularity or defect. The utility may substitute for its inspection an inspection by the appropriate state or local plumbing inspector, if proof of that inspection is presented to the utility by the customer.

20. BLWD is providing water service in violation of 807 KAR 5:066(9)(3) because it connected the Service Lines to the Meter and began providing water to the Horner Property without conducting an inspection of the Service Lines and without receiving proof that the Service Lines were inspected by a state or local plumbing inspector as required by 807 KAR 5:066(9)(3).

21. Furthermore, BLWD violated 807 KAR 5:066(10)(2) because the Service Lines exceed the maximum length allowed under the regulation. Pursuant to KAR 5:066(10)(2), the maximum allowable length for an individual small pipe line, such as the Service Lines, is 500 feet. The length of such pipes may only be extended with the approval of the Public Service Commission.

22. Here, the distance between the Meter and the Service lines is approximately 3,696 feet, more than seven times longer than what is allowed under Kentucky law. Upon information and belief, BLWD did not seek, nor did the Public Service Commission provide, approval for the non-conforming Service Lines.

23. Not only has BLWD breached its agreement with FHC, it has committed multiple violations of Kentucky law, and has infringed upon FHC's property rights.

24. Therefore, FHC asks the Public Service Commission to address these violations and compel BLWD to immediately cease providing water through the Service Lines.

Requested Relief

WHEREFORE, Futrell Holding Co., LLC respectfully requests that this Commission issue an Order:

(a) Compelling BLWD to immediately cease providing water through the Service Lines;

(b) Initiating an investigation by the Commission into BLWD's violations of Kentucky statutes and/or regulations in relation to the Service Lines;

(c) Requiring BLWD to raise and plead any objections it might have to the allegation of violations of Commission regulations;

(d) Granting Futrell Holding Co., LLC all other relief to which it might appear entitled.

Dated: November 14, 2023

Respectfully submitted,

/s/ Corey J. Dunn

Corey J. Dunn
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Louisville, KY 40202-3352
Telephone: (502) 779-5844
Counsel for Futrell Holding Co., LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 13th day of November, 2023, the forgoing document was filed via the Court's electronic filing system, and served by U.S. First Class Mail, postage prepaid, upon:

Barkley Lake Water District
c/o Scott Bridges, Chairman of the Board of
Commissioners
P.O. Box 308
Cadiz, KY 42211

/s/ Corey J. Dunn

Corey J. Dunn

217728:1

EXHIBIT A

To: [REDACTED]
Cc: Barkley Lake Water District <blwd@att.net>
Sent: Tue, Sep 27, 2022 3:04 pm
Subject: BLWD/Carrie Horner

Tim,

In accordance with the agreement we reached today, this email is to inform you that BLWD will not move forward to provide water to Ms. Horner. We will maintain the status quo as long as your lawsuit with Ms. Horner is pending. Further, as was stated, should the BLWD Board not agree with the agreement we have reached today, I will contact you with that information.

I will attempt to monitor the case on CourtNet but should you have any news of settlement, agreement or court resolution, I'd appreciate hearing from you. If I have misstated anything in this email, please respond as soon as possible

H. B. Quinn
Attorney At Law
PO Box 1549
Cadiz, KY 42211
[REDACTED]

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