

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

GARY A. SMITH	)	
	)	
Complainant	)	
	)	
V.	)	CASE NO.
	)	2024-00302
BLUEGRASS WATER UTILITY OPERATING	)	
COMPANY, LLC	)	
	)	
Defendant	)	

ORDER

On September 12, 2024, Gary A. Smith tendered a complaint against Bluegrass Water Utility Operating Company, LLC (Bluegrass Water) regarding Bluegrass Water’s sanitary sewer service to a single property. Specifically, Mr. Smith alleged that Bluegrass Water accepted a tap-on fee but subsequently claimed the address was not within its service area.

BACKGROUND

Mr. Smith is a property owner who owns real estate in Scott County, Kentucky. On September 2,<sup>1</sup> Mr. Smith received an e-mail from Bluegrass Water referencing the address advising him that an account was set up with the request that he pay the \$500 tap-on fee. Mr. Smith received an undated bill from “Bluegrass Water UOC LLC” for \$500 tap-on fee. On September 9, 2022, Mr. Smith made a check out to Bluegrass Water UOC LLC for \$500.

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<sup>1</sup> The year is unclear from the email.

On August 25, 2023, approximately one year from the date of the check, Mr. Smith received a letter from Bluegrass Water stating that “. . . once the expansion project for its Delaplain system has been completed, it will have the capacity to provide service to the residence. . . .” But went on to read “[t]he residence is outside the service territory for Bluegrass Water UOC and has no obligation to provide service.”

Mr. Smith requested that the Commission “define service area, the subdivision,” and “when will their system be upgraded.” According to Bluegrass Water tariff, the Delaplain Service Area includes “. . . the Deer Run, Moonlake Estates, Shuttle Run, and Riffton Meadows Subdivisions, all in the vicinity of the interchange.”<sup>2</sup> The tap-on fee is \$500.<sup>3</sup>

#### LEGAL STANDARD

As an initial matter, 807 KAR 5:006 Section 6(2)(2) reads “[u]nless specifically authorized by this administrative regulation, a utility shall not deny or refuse service to a customer who has complied with all conditions of service established in the utility's tariff on file with the commission.”

Administrative regulation 807 KAR 5:001 Section 20(1) 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.

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<sup>2</sup> Bluegrass Water’s Tariff on file with the PSC March 31, 2022 original sheet no. 1.2.

<sup>3</sup> Bluegrass Water’s Tariff on file with the PSC May 5, 2021 original sheet no. 3.2.

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 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.”<sup>4</sup> The *prima facie* requirement is not satisfied

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<sup>4</sup> See e.g., Case No. 2020-00107, *Christ Church United Methodist v. Louisville Gas and Electric Company* (Ky. PSC June 10, 2020), Order at 2.

unless the complaint is accompanied with supporting evidence.<sup>5</sup> 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.

### DISCUSSION AND FINDINGS

Having reviewed the complaint, the Commission finds that Mr. Smith did not fully and clearly cite to a specific regulation, statute, or tariff provision that Bluegrass Water allegedly violated. Sewer utilities do not have defined service territories, but the Commission is able to address providing service to a potential customer if a pipe is already available to the adjacent to the property or if the utility has a defined program for extensions of service. In addition, while the complaint makes vague reference to “define service area, the subdivision . . .” and other upgrades, Mr. Smith did not specify the relief sought pursuant to 807 KAR 5:001 Section 20(1)(d). Therefore, the Commission finds that the complaint, as written, does not establish a *prima facie* case. However, in accordance with 807 KAR 5:001, Section 20(4)(a)(1), the Commission finds that Mr. Smith should be afforded the opportunity to amend his complaint.

The Commission further finds that Mr. Smith should file an amended complaint within 20 days of the date of service of this Order. Mr. Smith may file his amended complaint by U.S. mail or by email to PSCED@ky.gov.

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<sup>5</sup> See e.g., Case No. 2016-00347, *Louisville/Jefferson County Metro Government v. Louisville Gas and Electric* (Ky. PSC Oct. 19, 2016), Order at 3 (in which the Commission rejected a complaint because Louisville Metro did not provide any evidence regarding which LG&E customers received their gas through main lines located under Louisville Metro’s rights-of-way); Case No. 2022-00133, *Biofuel Mining, Inc. v. Kentucky Power Company* (Ky. PSC May 6, 2022), Order at 6 (in which the Commission rejected a complaint because the evidence provided by the Complainant showed that Kentucky Power calculated its rates according to the tariff).

IT IS THEREFORE ORDERED that:

1. Mr. Smith'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. Mr. Smith 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 including an appropriate request for relief.

3. If Mr. Smith does not file an amended complaint within 20 days of the date of this Order, his complaint shall be dismissed without prejudice.

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PUBLIC SERVICE COMMISSION

  
Chairman

  
Commissioner

  
Commissioner

ENTERED  
OCT 23 2024  
rCS  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director

Gary A. Smith  
2410 Cincinnati Road  
Georgetown, KENTUCKY 40324

\*Bluegrass Water Utility Operating Company, LLC  
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St. Louis, MO 63131