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Commissioners

Dispute Resolution

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and Water Supply Regulatory Commission

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The Kentucky Dispute Resolution Process

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COMMON REASONS FOR CONSUMER COMPLAINTS

- **Billing** disputes
- **Disconnection** of service
- **Service** Quality/Outage
- **Rates/Policies**
- **Refusal** to provide service

RESOLUTION OF COMPLAINTS

LEGAL CONSIDERATIONS

- **Bill of Rights** (Customer)
- **Filed Tariff** (Utility)
- **Statutes** (Kentucky Law)
- **Regulations** (Commission)
- **Prior Decisions** (Commission, Court)

CUSTOMER BILL OF RIGHTS

(807 KAR 5:006 Sec. 14)

- To **educate customers of their rights** and of the utility's basic service obligations under Kentucky law and Commission's Administrative Regulations.
- Residential customers in Kentucky are **guaranteed rights** subject to Kentucky Revised Statutes and the provisions of the Kentucky Public Service Commission Administrative Regulations.
- Right to **service** if no debt to utility (807 KAR 5:006, Section 6 (2))

CUSTOMER BILL OF RIGHTS

- Right to **inspect** and **review** the utility's **rates** and **procedures** during the utility's normal office hours. (807 KAR 5:011, Section 12)
- Right to **be present** at utility **inspection** of service conditions. (807 KAR 5:006, Section 14 (3))
- Right to **maintain utility service** for up to thirty (30) days with medical certificate issued by a health official. (807 KAR 5:006, Sec. 15 (2)(c))

CUSTOMER BILL OF RIGHTS

- Right to **prompt restoration of service** (within 24 hours) once cause for discontinuance corrected. (807 KAR 5:006, Section 14 (4))
- Right to **contact the Commission** regarding dispute with utility.

FILED TARIFF

Related Laws

Statutes (KRS 278.160 (1) and (2))

Regulations: 807 KAR 5:006 (General Rules);
807 KAR 5:011 (Tariffs)

- **Schedule(s)** filed with Commission showing **all rates** and conditions of **service**.
- No utility shall charge, demand, collect or receive an amount that **differs** from **filed tariff**.

FILED TARIFF **MUSTS**

- If a fee is not in tariff, the utility **cannot charge it.**
- If a requirement is not in tariff, the utility **cannot impose it.**
- If a rule is not tariff, the utility **cannot enforce it.**
- If it is in the utility's tariff, it **must do it.**

COMPLAINT PROCESS AT THE **UTILITY LEVEL**

1. Customer **first talks to the utility** and attempts to resolve the dispute.
2. If unresolved, the **utility advises the customer** of the opportunity to contact the PSC for review of the dispute.
3. Customer **may contact the PSC** by telephone, fax, e-mail, letter, or in person. ¹⁰

UTILITY MUST DEAL WITH DIFFICULT CUSTOMERS

- Customer calls utility to complain- probably upset!
- Utility should **receive** the **complaint** with care and courtesy.
 - Who** is calling?
 - Why** are they calling?
 - What** does the customer wants the utility to do?
 - When** will the customer be contacted?
- Utility should **research** the complaint with diligence, and **resolve** the complaint with efficient customer service skills.

UTILITY MUST DEAL WITH DIFFICULT CUSTOMERS

Utility Should Provide

- **Customer** - a simple **billing and payment history and meter history**.
- **Commission Staff** - a “heads up” of **Customer’s possible complaint**.
- **Commission Staff** – **all available information** (such as billing, payment, and meter history, as well as, details regarding Utility’s visit to **Customer’s location**).

UTILITY OBLIGATIONS **TO CUSTOMERS**

- **Offer service** to Customers within its service territory.
- **Allow** Customers to **review utility's rates** and current approved **tariff** during normal office hours.
- **Allow** Customers to be **present when Utility is inspecting** service conditions.
- **Allow** Customers **to dispute** disconnection announcements.

UTILITY OBLIGATIONS **TO CUSTOMERS**

- **Negotiate partial payment plans** when disconnection for nonpayment is threatened.
- **Offer budget payment** plans.
- **Accept medical certificates of need** provided by health care professionals.
- **Reconnect service within 24 hours** when the cause of disconnection has been corrected.

INFORMAL COMPLAINT

PROCESS AT THE COMMISSION

1. Complaint made to the Commission's **division of consumer services**.
2. Complainant (usually customer) specifically states concerns and identifies the utility.
3. Commission **staff** acts as a **mediator**.
4. **Commission** itself **not involved** in the process.

(807 KAR 5:001, Sec. 21)

INFORMAL COMPLAINT

PROCESS AT THE COMMISSION

5. Complaints are made by telephone, fax, mail, e-mail, or walk-in (**most informal complaints are handled over the telephone**).
6. **Investigator** enters the Complaint into system and **identifies problem**.
7. **Investigator reviews** Utility's tariff, applicable regulations, and state statutes.

INFORMAL COMPLAINT

PROCESS AT THE COMMISSION

8. Investigator **forwards** the Complaint **to Utility** and requests account information and documentation.
9. **Utility contacts Complainant**, resolves complaint, and sends response to PSC.
10. Investigator **confirms Utility's response** with Complainant.
11. Complaint considered **resolved**.

INFORMAL COMPLAINT PROCESS AT THE COMMISSION

- Consumer services investigators routinely answer more than **2,500 telephone calls each month**. Most callers are requesting information regarding regulations, tariffs, and utility company practices.
- **Refunds, savings, and credits** to consumers is tracked. Consumer Services helped customers receive a total of \$100,679 in 2014 and in 2015 (first 6 months) have help customers receive \$55,745.

FORMAL COMPLAINT PROCESS **AT THE COMMISSION**

Formal Complaints (807 KAR 5:001, Sec. 20)

- Complaint made in **writing** and Commission **staff** acts in **prosecutorial** role/ advisor. **Commission makes final decision.**
- Consumers have **right** to file a formal complaint with the Commission.

FORMAL COMPLAINT PROCESS

AT THE COMMISSION

- Consumers are **not required** to **negotiate** with the **utility** directly or to bring an **informal complaint** before filing a formal complaint.
- Formal complaint may be filed **instead of** an informal complaint or after negotiations have not been successful.
- **Request** for a **formal investigation** of a complaint must be **made in writing**.

FORMAL COMPLAINT PROCESS

AT THE COMMISSION

- **Utility (if a “company”) must be represented by an attorney who signs documents.**
- **Formal complaint is assigned a case number and made part of the Commission’s docket of cases.**
- **Commission orders the utility to either satisfy the complaint or to file an answer to the complaint.**

FORMAL COMPLAINT PROCESS **AT THE COMMISSION**

Discovery process: to obtain information.

Data requests are sometimes referred to as requests for information.

- **Data requests** are **written questions** from Commission staff to complainant, utility, others.

FORMAL COMPLAINT PROCESS AT THE COMMISSION

Data requests

- Written questions from parties to each other.
- There may be **multiple rounds** of questions and answers.
- All answers are **sworn to and signed under oath**- rules of perjury apply.

FORMAL COMPLAINT PROCESS **AT THE COMMISSION**

Disclosure of case documents

- All case documents become **public records** when filed- unless covered by confidentiality request.
- **Case documents** are generally **posted** on the Commission's **website** within 24 hours of filing.
- **Confidentiality** granted in **limited** circumstances (includes private account information).

FORMAL COMPLAINT PROCESS **AT THE COMMISSION**

Informal Conference – a **meeting** held at the Commission's offices or by telephone between Commission staff, the utility, and complainant, used to discuss **procedures** for the case and possible settlement.

- Informal conference can be **initiated** by Commission staff or **requested** by any party to the case.

FORMAL COMPLAINT PROCESS **AT THE COMMISSION**

Informal conference

- All parties are **notified in writing in advance** of the informal conference.
- Informal conferences are **publically disclosed** on PSC schedule through its website.
- Commission **staff only** – **no Commissioners** attend.

FORMAL COMPLAINT PROCESS **AT THE COMMISSION**

Informal Conference

- **Attendance** sheet is signed by all in attendance.
- Commission **staff prepares** and files informal conference **memorandum** summarizing what happened at the informal conference, with attendance sheet attached.
- **Attendees** at conference have 5 days to file written response to the memorandum

FORMAL COMPLAINT PROCESS **AT THE COMMISSION**

Settlement -of a formal complaint:

- Settlement negotiations are between a **utility, complainant, other parties.**
- May include Commission staff -but only in an **advisory** role.
- Settlement of a formal complaint must be **reviewed** and **approved** by **Commission.**

FORMAL COMPLAINT PROCESS **AT THE COMMISSION**

Evidentiary hearing (if case not settled).

- **Unless** there is a Commission-approved **settlement** of a formal complaint the **Commission** generally **holds** an evidentiary **hearing**.
- In a few formal complaint cases, where all the facts are known and undisputed, the **parties may waive the formal hearing** and the matter is decided “**on the record**”.

FORMAL COMPLAINT PROCESS **AT THE COMMISSION**

Evidentiary hearing

- At the hearing the **utility** and the **complainant** **present** their **positions** through witnesses and documentation. Utility must be represented by an attorney.
- The Commission and Commission staff may participate and ask questions.

FORMAL COMPLAINT PROCESS **AT THE COMMISSION**

Evidentiary hearing

- Held at Commission offices- broadcast via Commission website.
- May require published notice of hearing.

FORMAL COMPLAINT PROCESS **AT THE COMMISSION**

Evidentiary hearing

Public comments:

- Made at Commission's discretion.
- May be made **prior** to/**during**/at **end** of evidentiary hearing.
- Solely for **information**/comment.

FORMAL COMPLAINT PROCESS **AT THE COMMISSION**

Evidentiary hearing

Order of testimony

- Complainant
- Intervenors
- Utility

Process of testimony

- Direct examination
- Cross examination- may include Commission staff and Commission

FORMAL COMPLAINT PROCESS **AT THE COMMISSION**

Evidentiary hearing

Post- hearing discovery

- Post-hearing **data requests** – information or documents requested at the hearing that are filed after hearing.
- Post-hearing **written briefs**

Simultaneous filing

More common in complex cases

FORMAL COMPLAINT PROCESS **AT THE COMMISSION**

Evidentiary hearing

- **No quorum required-** Commission may appoint hearing officer.
- Hearing is **not decisional** – except for emergency rulings; rulings on **motions or procedure**.
- **Commission issues a written** final order with its decision on the case.

FORMAL COMPLAINT PROCESS **AT THE COMMISSION**

Evidentiary hearing decision

- **Commission's process** itself is **not open** to public.
- Commission staff prepares report with options and recommendations.
- Commission usually discusses options and recommendations with Commission staff prior to making decision.

FORMAL COMPLAINT PROCESS **AT THE COMMISSION**

Commission Decision

Requirements

- Final orders require a **quorum of Commission.**
- Final orders require a **majority decision of the Commission.**
- Commissioners **may dissent** in whole or in part.
- Commission in minority may write dissent which becomes part of the published order.

FORMAL COMPLAINT PROCESS **AT THE COMMISSION**

Commission decision- publication

“The Commission speaks only through its orders”

- All decisions- even procedural- are in the form of a **written** order.
- All orders are made **public**.
- All orders are **posted on website** when issued.
- Copies **served** on parties (regulatory change allows service of orders electronically).
- Original orders are permanent record.

CONTESTING A COMMISSION DECISION

Decisions of the Kentucky Public Service

Commission **cannot be contested until a final order** is issued in the case (KRS 278.400 et seq)

Rehearing

Once a final order is issued:

- 23 calendar days to **request a rehearing** by the Commission.
- Three days for service of order.
- 20 days to request rehearing.

CONTESTING A COMMISSION DECISION

- Party may request rehearing in **whole** or **in part**.
- To obtain a rehearing, the requesting party must present **evidence** of PSC **error** or be able to present **additional evidence** that could not reasonably have been offered during the course of the original proceeding.
- PSC has 20 calendar days to respond to rehearing request and **inaction** by PSC constitutes **denial**.

REHEARING PROCESS

If Commission grants **rehearing**:

- May grant rehearing in whole or in part.
- New procedural schedule issued.
- Previous parties may participate, even if not parties to rehearing request.
- At conclusion of rehearing, Commission may **affirm, vacate or modify** original order.
- **Order on rehearing is final and appealable.**

COURT CHALLENGE

- **Direct challenge** (if no rehearing sought)- 33 calendar days after final order (includes 3 days for service of order).
- **Rehearing** request denied- 23 calendar days after denial of rehearing (includes 3 days for service of order).
- **Final order** on rehearing -23 calendar days (includes 3 days for service of order).

COURT CHALLENGE

Appeals of Commission decisions

- **Filed** in Franklin Circuit Court- local court in state capital- rather than in court of local jurisdiction for the utility (Kentucky has 120 separate counties).
- **Burden of proof:** challenging party must show, by clear and convincing evidence, that PSC's actions were **unlawful** or **unreasonable**.
- **Designation of record**
 - PSC must file case record.
 - Appealing party must **designate** pertinent portions of record- 10 days to designate.

COURT CHALLENGE

Appeals of Court decisions

- Franklin Circuit Court decisions go to Kentucky **Court of Appeals**- its decision may be appealed to Kentucky **Supreme Court**
- Cases involving PSC application of federal laws (almost always involves telecommunication matters) are appealed to **federal courts**

HYPOTHETICAL

CASE NO. 1

Utility “A” vs Utility “B”

Parties:

- **Utility A** is a Rural Electric Distribution Cooperative.
- **Utility B** is a generation and distribution supplier, which provides electric energy to 16 member/owners (“Members”) including Utility A, and is governed by them.

HYPOTHETICAL

CASE NO. 1

Utility A vs Utility B

Background:

- Utility A filed a **formal complaint with the Commission** against Utility B and requested permission to **purchase some of its electric power** from a supplier other than Utility B. Utility A claimed unfair and illegal restraints of trade and asked the Commission to impose a monetary penalty against Utility B.

HYPOTHETICAL

CASE NO. 1

Utility A vs Utility B

Background:

- For many years, **Utility B** has had what was known as “**full requirements**” **contracts with** each of its **16 Members**. The full requirements contracts required each of the 16 Members to purchase and receive from Utility B all power and energy required for the Members’ respective systems.
- These wholesale power contracts were required to be in place by Utility B’s primary lender (“Lender”), as security for the loans made to Lender to Utility B.

HYPOTHETICAL

CASE NO. 1

Utility A vs Utility B

Background:

- Each of the 16 Members entered into an **amendment** (“Amendment 3”) to their **full requirements power contracts** with Utility B which allows the Members to purchase a quantity of power from alternative suppliers, within certain limitations.

HYPOTHETICAL

CASE NO. 1

Utility A vs Utility B

Background:

- These **limitations** are (a) up to a total of **5 percent** of **Utility B's** highest coincident **peak** demand in the past 36 months; and, (b) up to **15 percent** of each of the **16 Members'** highest coincident peak demand in the past 36 months.

HYPOTHETICAL

CASE NO. 1

Utility A vs Utility B

Legal issues:

- **Interpretation** and enforcement of the **terms** of a purchase power agreement between 16 Members and Utility B.
- **Methodology** for the Members to share in the **allocation of alternative sourced power** authorized by the wholesale power contract.
- Is there a **conflict** between the two provisions?

HYPOTHETICAL

CASE NO. 1

Utility A v Utility B

Questions for the Commission:

- Should the Commission allow Utility A's complaint to proceed against Utility B?

If yes

- Should the other 15 Members be notified and allowed to intervene in the case?

If no

- What other options does the Commission have?

HYPOTHETICAL

CASE NO. 2

Utility “C” v Utility “D”

Parties:

- **Utility C** is a retail electric distribution utility.
- **Utility D** is a retail Rural Electric Cooperative Corporation utility.

HYPOTHETICAL

CASE NO. 2

Utility C v Utility D

Background:

- Utility C filed a **formal complaint** against Utility D for providing electric service to two residences that were located in Utility C's **certified territory**.
- Utility D **admitted providing electric service** to the two residences but argued that the location of the two residences was **more likely** to be located within the certified territory of Utility D rather than in the certified territory of Utility C.

HYPOTHETICAL

CASE NO. 2

Utility C v Utility D

Background:

- Utility D also argued that Utility C had previously **agreed** that Utility D would serve the area where the two residences were located instead of Utility C.
- Utility C **disputed** that there was ever such an agreement.

HYPOTHETICAL

CASE NO. 2

Utility C v Utility D

Legal issues:

- Kentucky law provides that each **retail electric supplier** shall have the **exclusive right** to furnish **retail electric service** to all electric consuming facilities located within its **certified territory**.
- Kentucky law also provides that a retail electric supplier may **contract** with another retail electric supplier for the purpose of **allocating territories** and consumers between such retail suppliers as long as the contract is **approved by the Commission**.

HYPOTHETICAL

CASE NO. 2

Utility C v Utility D

Questions for the Commission:

- **Was there a written contract** concerning the allocation of territory and the two residences?

If yes:

- Had the written contract been **approved by the Commission.**

If no to either question:

- What should the **Commission decide?**

HYPOTHETICAL

CASE NO. 3

Consumer v City Utility and Public Utility

Parties:

- **Consumer** owned 100 acre farm in Kentucky, purchased in 1975.
- **City Utility** is a city owned utility **not regulated by the Commission.**
- **Public Utility** is a utility **regulated** by the Commission for rates and service.

HYPOTHETICAL

CASE NO. 3

Consumer v City Utility and Public Utility

Background:

- Since 1964, Public Utility had provided water and sewer service to the area of a County that is outside the political boundary of the city.
- In 2006 and 2007 City Utility and Public Utility established **new service area boundaries** between them for the provision of **water** and **sewer service**. These new boundaries divided Consumer's farm for both water and sewer service.

HYPOTHETICAL

CASE NO. 3

Consumer v City Utility and Public Utility

Background:

- Consumer filed a **formal complaint** against City Utility and Public Utility.
- Consumer requested that City Utility and Public Utility be ordered to **adjust** their **new service area boundaries**.
- Consumer requested that that Public Utility continue as the **exclusive provider** for water and sewer to Consumer's farm.

HYPOTHETICAL

CASE NO. 3

Consumer v City Utility and Public Utility

Legal issue:

- **Jurisdiction** of the Commission over the parties to this dispute.
- **Statutory definition of a “utility”** regulated by the Commission, expressly excludes any city owned utility.

HYPOTHETICAL

CASE NO. 3

Consumer v City Utility and Public Utility

Questions for the Commission:

- Should the Commission accept Consumer's formal complaint?

If yes

- Can the Commission order City Utility and Public Utility to adjust the territorial boundaries that they had agreed to?
- Can the Commission order Public Utility to provide water and sewer service for Consumer's entire farm?

If no

What is Consumer's recourse?

HYPOTHETICAL

CASE NO. 4

Property Owner v Public Utility

Parties:

- **Property Owner** owns property over which Public Utility constructed a **transmission line**.
- Public Utility is a rural electric cooperative engaged in the **generation** and **distribution** of electric energy.

HYPOTHETICAL

CASE NO. 4

Property Owner v Public Utility

Background:

- Public Utility **constructed a double-circuit 345/ 69-kilovolt (“kV”) transmission line**, which crossed property that was owned by Property Owner.
- Public Utility reconstructed the transmission line to double-circuit 345/69-kV.

HYPOTHETICAL

CASE NO. 4

Property Owner v Public Utility

Background:

- Property Owner claimed that the reconstructed transmission line created dangerous electromagnetic field (EMF) exposure, **electric shocks** and created human **health concerns**.
- Property Owner claimed that because Public Utility had not obtained **Commission approval** to upgrade the transmission line, Property Owner was **denied** the opportunity to **argue against** the **upgrade** before the Commission.

HYPOTHETICAL

CASE NO. 4

Property Owner v Public Utility

Background:

- Property Owner requested **monetary damages** and that the transmission **line be moved** to a different location.
- In an offer of **settlement**, Public Utility offered Property Owner the **difference** in the **value** of the property **before** the upgrade and **after** the upgrade of the transmission line (which would include Property Owner keeping the property), or Public Utility would purchase Property Owner's property. Property Owner **rejected** both offers of settlement.

HYPOTHETICAL

CASE NO. 4

Property Owner v Public Utility

Legal issues:

- Kentucky law provides a means for any interested person, including a landowner **on whose property a transmission line will be routed**, to **intervene** and be heard in an action before the Commission regarding the line.
- Was Public Utility's rebuilding of a double-circuit 345/69-kV line to a double-circuit 345/138-kV **replace or upgrade** the existing line or did it create a completely **new** transmission line which required Commission approval.

HYPOTHETICAL

CASE NO. 4

Property Owner v Public Utility

Questions for the Commission:

- **Did Property Owner prove that there is a causal link between EMF exposure and verified health risks?**

If yes

- **Should Public Utility be required to relocate the 345/138-kV transmission line?**

HYPOTHETICAL CASE NO. 4

Property Owner v Public Utility

Questions for the Commission:

- Was Public Utility required to obtain Commission approval prior to replacing the 345/5-kV transmission line with a 345/138-kV line?

If yes

- Should the Public Utility be ordered to relocate the 345/138-kV transmission line?

HYPOTHETICAL

CASE NO. 4

Property Owner v Public Utility

Questions for the Commission:

- What **options** are available to the Commission if Public Utility constructed the new transmission line without required approval of the Commission?
- What **remedy** does Property Owner have?

FINAL POINTS

Questions?

