

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KEN K. CRAIN	)	
	)	
COMPLAINANT	)	CASE NO.
	)	2016-00288
V.	)	
	)	
EDMONSON COUNTY WATER DISTRICT	)	
	)	
DEFENDANT	)	

ORDER

On July 25, 2016, Ken K. Crain (“Mr. Crain”) tendered a formal complaint (“Complaint”) with the Commission against Edmonson County Water District (“Edmonson County”) in which he alleges that Edmonson County does not provide its customers with sufficient time to pay their bills before incurring a late fee. On August 1, 2016, Mr. Crain tendered an addendum to the Complaint in which he requested that Edmonson County be held financially responsible for any expense incurred by a customer that results from a hacker’s unauthorized access to Edmonson County’s computer system. On August 22, 2016, the Commission issued an Order stating that it was unable to determine whether the Complaint established a *prima facie* case and ordered Mr. Crain to provide certain materials to enable the Commission to further investigate the merits of his Complaint (“Order”). On September 1, 2016, Mr. Crain tendered his reply (“Reply”) to that Order. Having reviewed the record and being otherwise advised, the Commission finds that Mr. Crain has failed to establish a *prima*

*facie* case, and pursuant to Commission regulations, should be permitted the opportunity to amend the Complaint to establish a *prima facie* case within the designated time, or the matter will be dismissed.

### BACKGROUND

Mr. Crain receives water service from Edmonson County for property located at 928 Nolin Estates Road, Clarkson, Kentucky, but receives bills for said service at his billing address in Terre Haute, Indiana.<sup>1</sup> In his Complaint, Mr. Crain states that he pays his monthly bill using his bank's online bill payment system, which may take up to four business days to process and send the payment to the payee,<sup>2</sup> and that Edmonson County's monthly bills are due 14 days after they are mailed to customers.<sup>3</sup> Mr. Crain alleges that he has incurred late fees on his Edmonson County bill because of the total time it takes to receive the bill in the mail, to process and remit payment from his bank's online bill pay, and for receipt of the bank's payment by Edmonson County.<sup>4</sup>

On August 22, 2016, the Commission issued an Order directing Mr. Crain to file certain evidence to support his claim, including: copies of water bills issued to Mr. Crain by Edmonson County for each month of 2016 to date; copies of payment records for water bills from Edmonson County for each month of 2016 to date; details about his online bill-payment process, including: (1) how Mr. Crain initiates payment transactions for the Edmonson County bills; (2) whether payment is made via a check created by Mr. Crain's bank and mailed to Edmonson County, or by electronic transfer of funds from

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<sup>1</sup> Complaint at 1-2.

<sup>2</sup> Complaint at 2.

<sup>3</sup> Complaint at 1.

<sup>4</sup> *Id.*

Mr. Crain's account to Edmonson County's bank account; (3) how Mr. Crain is alerted when payment is sent by his bank to the payee; (4) the total amount of late fees incurred; and (5) the billing dates for each bill for which a late fee was incurred for 2016 to date.<sup>5</sup>

On September 1, 2016, Mr. Crain filed a Reply, which included copies of two monthly bills, one issued June 28, 2016, with a due date of July 13, 2016, for water service from May 24, 2016, through June 16, 2016, and one issued July 22, 2016, with a due date of August 13, 2016, for water service from June 17, 2016, through July 18, 2016.<sup>6</sup> Mr. Crain also filed a copy of a delinquent account notice dated July 18, 2016, and a copy of his billing and payment history from August 2015, through August 2016.<sup>7</sup>

In his Reply, Mr. Crain states that the total amount of late fees incurred is \$1.39.<sup>8</sup> Mr. Crain explains that it could actually take seven to ten business days for his bank to process and send a payment to Edmonson County.<sup>9</sup> He further explains that he enters his payment to Edmonson County through Quicken software ("Quicken"), which generates a request to his bank for payment.<sup>10</sup> His bank then issues a paper check and mails it to Edmonson County.<sup>11</sup> When payment is requested, Quicken provides the earliest date that payment can be received by Edmonson County, which is usually eight

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<sup>5</sup> Order at 2-3.

<sup>6</sup> Reply at 1.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

days from the entry date, and the bank guarantees that the payment will get to Edmonson County by that suggested date.<sup>12</sup> Mr. Crain asserts that he has no control over the time period it takes for his bank to issue and mail the paper check.<sup>13</sup>

### DISCUSSION

Commission regulation 807 KAR 5:001, Section 20(1)(c), requires that a formal complaint must state:

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.

Further, 807 KAR 5:001, Section 20(4)(a), requires the Commission to determine whether a complaint establishes a *prima facie* case. A complaint establishes a *prima facie* case when, on its face, it states sufficient allegations that, if uncontroverted by other evidence, would entitle the complainant to the relief requested. The party filing a complaint has the burden of proving his claim.

Under 807 KAR 5:001, Section 20(4)(1)(a), if a determination is made that the complaint fails to establish a *prima facie* case, the complainant must be provided the opportunity to amend the complaint within a specified time. If the complaint is not timely amended to set forth a *prima facie* case, the complaint is dismissed.

Here, by failing to provide evidence that his late fee resulted from an improper act, or omission, on the part of Edmonson County, or that Edmonson County's time period for payment is unreasonable, Mr. Crain fails to establish a *prima facie* case.

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

According to its Tariff, Edmonson County mails its bills “within five days after the close of the reading cycle,” which for Mr. Crain’s account is between the “17th and last day of the month,” and the “past due date shall be . . . the 13th for bills mailed for the last day of the month cycle.”<sup>14</sup> The two bills provided by Mr. Crain show a due date on the 13th, in accord with Edmonson County’s Tariff. According to the billing and payment history provided by Mr. Crain, his bill issued June 28, 2016, was paid 21 days later, on July 19, 2016; and his bill issued July 22, 2016, was paid 17 days later, on August 8, 2016.<sup>15</sup> Both payments were outside of the time period for payment pursuant to Edmonson County’s Tariff, which is the 13th of the month. Edmonson County’s Tariff provides for a 10 percent penalty if the bill is not paid by the due date.<sup>16</sup> According to the payment records provided by Mr. Crain, he was charged a \$1.30 late fee on July 14, 2016, which is in accordance with Edmonson County’s Tariff.<sup>17</sup> Further, Mr. Crain received a delinquent account notice dated July 18, 2016, in accordance with Edmonson County’s Tariff.<sup>18</sup>

Mr. Crain asserts that he has no control over the time period for which it takes his bank to process and send payment to Edmonson County.<sup>19</sup> However, Mr. Crain is aware of the general time constraints for his chosen method of payment and has not provided evidence that Edmonson County has failed to comply with its Tariff. Mr. Crain

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<sup>14</sup> Edmonson County Tariff (effective July 15, 2011) at Revised Sheet No. 3, Paragraph G(1).

<sup>15</sup> Reply at 5.

<sup>16</sup> Edmonson County Tariff at Revised Sheet No. 3, Paragraph G(1).

<sup>17</sup> Reply at 4–5.

<sup>18</sup> *Id.* at 3; Edmonson County Tariff at Revised Sheet No. 3, Paragraph G(2).

<sup>19</sup> Reply at 1.

contends that Edmonson County never posts his payment on the bank's guaranteed delivery date, and that Edmonson County is not posting the payment on the same date it receives the payment.<sup>20</sup> However, Mr. Crain does not know if Edmonson County receives a check until the payment clears his account and is denoted as a cleared date in Quicken.<sup>21</sup> Mr. Crain has failed to provide the Commission with any proof that Edmonson County fails to post his payment on the date it receives the same, or that any delay on Edmonson County's part is a cause of his late fees.

Edmonson County provides four methods of payment for its customers: 1) by mail; 2) by phone, using a credit or debit card; 3) automatic bank withdrawal; and 4) an online bill payment option with payments credited to the account within two business days.<sup>22</sup> Mr. Crain declines to utilize other methods for paying his water bill, asserting that there are "major problems" with alternative payment options offered by Edmonson County, which, according to Mr. Crain, include the possibility of having his bank account compromised if he provides the account information to Edmonson County and its computer system is "hacked."<sup>23</sup> Mr. Crain has not provided any evidence of problems with other methods of payment to support his claim that Edmonson County does not provide enough time for customers to make payment. Any of these alternate payment

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> See <http://www.ecwdwater.com/billpay.html>. These are the same payment options provided by surrounding water districts; See [http://butlerwater.com/rs-Payment\\_Options](http://butlerwater.com/rs-Payment_Options) (Butler County Water Service's payment options) and [http://www.warrenwater.com/rs-Payment\\_Options](http://www.warrenwater.com/rs-Payment_Options) (Warren County Water District's payment options), both of which provide for payment by mail, phone (using Visa or MasterCard), automatic payment plan, and online bill pay.

<sup>23</sup> Complaint at 2; Reply at 1.

options would appear to give Mr. Crain ample time to make his payment in a timely manner, should he choose to use them instead of his current method.

Mr. Crain requests that Edmonson County be required to electronically send water bills to its customers via text message and e-mail; extend the bill due date from 14 to 21 days; reimburse his late fees; return all penalties to customers who were not allowed to pay their bill on time; and be liable for any expense incurred by a customer whose online payment information is “hacked” from Edmonson County’s computer system.<sup>24</sup> After careful review of the evidence that has been provided by Mr. Crain to the Commission, it appears that Edmonson County’s billing practices are in accord with its Tariff. While Edmonson County may voluntarily choose to electronically send water bills to its customers, and other water districts do provide billing in this format,<sup>25</sup> there is no such requirement under law. Likewise, Edmonson County may choose to extend the period for its bill due date, but there is no requirement to do so under law, and any such change would necessitate a change to its Tariff on file with the Commission. Because Mr. Crain failed to provide evidence that Edmonson County violated its Tariff provisions for billing and late fees, Mr. Crain fails to establish any basis for a refund of late fees. Lastly, the Commission lacks jurisdiction over any claims for fees or financial losses as a result of online payment information being “hacked.”

For the above reasons, the Commission finds that Mr. Crain’s Complaint neither conforms to the requirements of 807 KAR 5:001, Section 20(1), nor establishes a *prima facie* case. The Commission, in accordance with 807 KAR 5:001, Section 20(4)(a)(1),

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<sup>24</sup> Complaint at 2. See also Addendum to Complaint (filed July 27, 2016) at 2.

<sup>25</sup> See Warren County Water District, Rates & Charges – Rules & Regulations, filed with PSC September 12, 2013, effective date October 17, 2013; See also Butler County Water System, Inc., Rates – Charges – Rules – Regulations, filed with PSC June 1, 2016, effective date June 6, 2016.

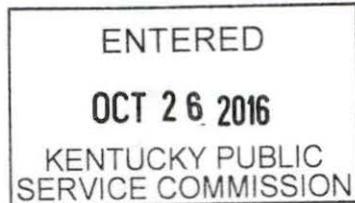
will provide Mr. Crain an opportunity to amend his Complaint to address the deficiencies therein.

IT IS THEREFORE ORDERED that:

1. Mr. Crain's Complaint is rejected for failing to conform to the requirements of 807 KAR 5:001, Section 20(1)(c), and for failing to state a *prima facie* case.

2. Mr. Crain shall have 14 days from the 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), and that states a *prima facie* case.

By the Commission



ATTEST:

  
Executive Director

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