

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ROSALIND COLE)	
)	
COMPLAINANT)	
)	
V.)	CASE NO. 2011-00219
)	
KENTUCKY-AMERICAN WATER COMPANY)	
)	
DEFENDANT)	

ORDER

Rosalind Cole has filed a formal complaint against Kentucky-American Water Company ("Kentucky-American") in which she alleges that the water utility unlawfully refused to enter a reasonable partial payment plan with her. Kentucky-American has answered the complaint and requests that the Complaint be dismissed for failure to state a *prima facie* case. Finding that the Complainant has failed to state a *prima facie* case, we dismiss the complaint and close this matter.

Background

Kentucky-American, a Kentucky corporation, owns and operates water treatment and distribution facilities that provide water service to approximately 122,765 customers in Bourbon, Clark, Fayette, Gallatin, Grant, Harrison, Jessamine, Owen, Scott, and Woodford Counties of Kentucky.¹

¹ Annual Report of Kentucky-American Water Co. for the Calendar Year Ended December 31, 2011 at 5, 27.

Complainant, a resident of New York City, owns a small farm in Fayette County, Kentucky. She maintains several horses on this farm. For more than 30 years, Kentucky-American has provided water service to the farm.²

Since on or before 2004, the internal water lines on Complainant's farm were apparently subject to significant water leaks. During the period from October 2000 to December 2003, Complainant received five leak adjustments from Kentucky-American totaling \$3,361.42.³ In November 2004, Kentucky-American briefly discontinued service to the Complainant for failure to timely pay her bills.⁴ Complainant and Kentucky-American, however, reached a payment agreement and service was promptly restored. Shortly before the restoration of service, the Complainant represented to Kentucky-American that all underground leaks had been repaired.⁵

Until March 2007, the Complainant was able to timely pay her bills. Since March 5, 2007, Complainant has been unable to maintain a zero balance on her account with Kentucky-American. By April 23, 2008, she had fallen into arrears on her payments and owed \$1,520.79. This balance steadily grew to \$2,068.63 on April 21, 2009, and to \$2,989.98 on April 21, 2010.⁶

As the bill grew larger and the Complainant fell further in arrears, Kentucky-American entered into several payment agreements with the Complainant to ensure her payment and allow service to continue. On August 31, 2009, Complainant and

² Complaint.

³ Letter from Debbie Maurer, Performance Specialist-Escalation, American Water Service Center, to Mrs. Carlton Cole (Nov. 10, 2004) at 2.

⁴ *Id.* at 1.

⁵ *Id.*

⁶ Kentucky-American's Response to Commission Staff's First Request for Information, Item 6.

Kentucky-American entered into an agreement in which Complaint agreed to make monthly payments of \$93.59 in addition to her current charges for a period of 24 months.⁷ On January 14, 2010, they entered a new payment agreement to reduce Complainant's outstanding arrearage of \$3,102.64.⁸ Under the terms of this agreement, Complainant was to make additional payments of \$193.92 each month for 16 months. The parties entered two additional payment agreements on March 8, 2010 and on June 16, 2010.⁹

Despite these payment agreements, Complainant's arrearage did not abate. On March 11, 2011, Kentucky-American issued a notice to the Complainant demanding payment of \$2,972.53 by March 23, 2011 and threatening termination of water service if payment was not received.¹⁰ While Complainant made several payments totaling \$3,246.18 over the next 60 days, these payments failed to significantly reduce her arrearage. Significant water usage at the Complainant's farm has actually increased her arrearage. During the period between April 14, 2011 and May 19, 2011, the monthly bill for water service to her farm was \$2,498.86.¹¹

Concerned by the increasing size of the arrearage, Kentucky-American informed the Complainant by letter on May 12, 2011 that failure to pay the arrearage of \$4,335.62

⁷ Letter from Kentucky-American Customer Service to Mrs. Carlton Cole (Sept. 1, 2009).

⁸ Letter from Kentucky-American Customer Service to Mrs. Carlton Cole (Jan. 15, 2010).

⁹ Letter from Kentucky-American Customer Service to Mrs. Carlton Cole (Mar. 9, 2010); Letter from Kentucky-American Customer Service to Mrs. Carlton Cole (Sept. 1, 2009). Letter from Kentucky-American Customer Service to Mrs. Carlton Cole (June 17, 2010).

¹⁰ Letter from Kentucky-American Customer Service to Mrs. Carlton Cole (Mar. 11, 2011).

¹¹ Kentucky-American's Response to Commission Staff's First Request for Information, Item 1, Monthly Bill of Mrs. Carlton Cole (June 6, 2011).

by May 24, 2011 would result in termination of water service.¹² On June 1, 2011, Kentucky-American terminated service to the Complainant's farm.¹³ It further advised the Complainant that water service would not be restored until she had paid at least one-half of her current bill and would have to pay the remaining half of her current bill by June 30, 2011. On June 8, 2011, Complainant made a payment of \$1,346.18.¹⁴

Following the submission of her written complaint to the Commission on June 24, 2011, the Complainant was unable to make any significant reduction in her arrearage. As of September 21, 2011, her unpaid balance had grown to \$5,509.38.

Procedure

On June 24, 2011, Complainant filed a formal complaint with the Commission in which she alleged that Kentucky-American was refusing to enter into a reasonable payment plan and requested that the Commission require Kentucky-American to enter into a payment plan that would require her to pay no more than \$500 monthly, including any current charges.

On July 25, 2011, Kentucky-American answered the Complaint and denied that it had acted unreasonably. It further stated that its actions were consistent with Commission regulations. It requested that the Complaint be dismissed for failure to state a *prima facie* case. Following the submission of Kentucky-American's Answer, Commission Staff served requests for information upon Kentucky-American, to which Kentucky-American responded on October 3, 2011.

¹² Letter from Kentucky-American Customer Service to Mrs. Carlton Cole (Mar. 11, 2011).

¹³ Answer at ¶ 6 (filed July 25, 2012).

¹⁴ Kentucky-American's Response to Commission Staff's First Request for Information, Item 6.

Discussion

The sole issue before the Commission is whether the Complainant has stated a *prima facie* case against Kentucky-American. A complaint establishes a *prima facie* case when, on its face, it sets forth sufficient allegations that if uncontradicted by other evidence would entitle the complainant to the requested relief. The Complainant has failed to present a *prima facie* case.

Commission regulations permit a utility to discontinue service when a customer fails to pay his or her bill. 807 KAR 5:006, Section 14(1)(f), provides that a “utility may terminate service at a point of delivery for nonpayment of charges incurred for utility service at that point of delivery.” A utility, however, may not “terminate service for nonpayment if the customer and the utility have entered into a partial payment plan . . . and the customer is meeting the requirements of the plan.”¹⁵ A utility must “negotiate and accept reasonable partial payment plans at the request of residential customers who have received a termination notice for failure to pay” except when the customer is “delinquent under a previous partial payment plan.”¹⁶

The evidence in the record shows that Kentucky-American entered into several partial payment plans with the Complainant. In each instance, the Complainant failed to comply with the terms of those plans. As of the date when she filed her complaint, the Complainant was delinquent in her payment of the most recent partial payment plan.¹⁷

¹⁵ 807 KAR 5:006, Section 14(2)(b).

¹⁶ 807 KAR 5:006, Section 13(2). Partial payment plans must be mutually agreed upon. Those plans that extend for a period longer than thirty (30) days must be in writing and must advise customers that service may be terminated without additional notice if the customer fails to meet the obligations of the plan.

¹⁷ As of June 24, 2011, Complainant's unpaid balance was \$5,035.49. Pursuant to the terms of the partial payment agreement of June 16, 2010, it should have been \$563.79.

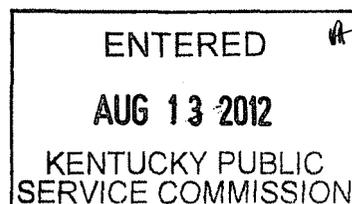
As of September 21, 2011, the Complainant's unpaid balance was almost double the initial unpaid balance when the last partial payment plan had been developed. Pursuant to 807 KAR 5:006, Section 13(2), Kentucky-American is not required to enter into further partial payment plans with the Complainant.

Conclusion

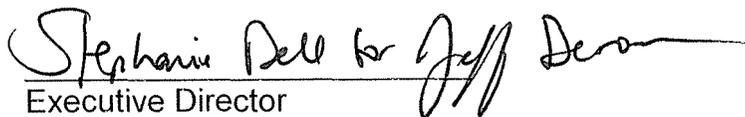
Based upon our review of the record, the Commission finds that a hearing is not necessary in the public interest or for the protection of substantial rights. We further find that the neither the existing record nor the Commission's regulations support the request that Kentucky-American be compelled to enter another partial payment plan with the Complainant for unpaid debts for water service incurred prior to the filing of the Complaint.

IT IS THEREFORE ORDERED that the Complaint is dismissed and this docket is closed.

By the Commission



ATTEST:


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