

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DONALD ROBERTS)	
)	
COMPLAINANT)	
)	
V.)	CASE NO.
)	2021-00319
)	
DEXTER-ALMO HEIGHTS WATER DISTRICT)	
)	
DEFENDANT)	

ORDER

On August 3, 2021, Donald Roberts, filed a complaint alleging that Dexter-Almo Heights Water District (Dexter-Almo District) overbilled him for water usage. Mr. Roberts alleged that Dexter-Almo District fraudulently, mistakenly, or by failure to read his meter, overstated his water usage.

BACKGROUND

Dexter-Almo District installed a meter¹ at Mr. Roberts's service address on or about March 17, 2019, and Mr. Roberts established an account on or about April 2, 2019.² Dexter-Almo District began billing Mr. Roberts for water usage in June 2019 after he installed his service line and began using water.³ Mr. Roberts claimed he lives alone in

¹ Meter Serial No. 11462147.

² Dexter-Almo Heights Water District Answer to Complaint and Response to Commission Order at 2.

³ *Id.* at 3. Dexter-Almo bills by hundreds of gallons. Mr. Roberts was charged for 100 gallons for June 2019 for water usage between zero and 100 gallons.

a 560 sq. ft. house at the service address.⁴ He also stated that from April to November 2019 he was only in the house for 20 hours per month while he performed construction work on the house.⁵ He claimed that during this time, he had only connected a shower, a low-flow toilet, a tankless water heater, a kitchen sink, no bathroom sink, and one outdoor spigot.⁶ Usage data supplied by Dexter-Almo District showed usage ranging from 100 to 800 gallons per month during this time.⁷ Dexter-Almo District installed a new meter⁸ on or about October 31, 2019, at Mr. Roberts' request.⁹ Once Mr. Roberts began living in the house full-time, his usage increased. Between November 2019 and July 2021, data indicated usage from 400 to 1,800 gallons¹⁰ with outliers of 3,700 and 4,500 gallons in May and June 2021.¹¹

Mr. Roberts claimed he could not possibly have used up to 4,500 gallons per month. He claimed that he has no major leaks.¹² Mr. Roberts stated that he performed his own plumbing work,¹³ and in response to discovery requests from Commission Staff, did not provide any measures he took to detect leaks in his service line or plumbing

⁴ Complaint at unnumbered 3.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at unnumbered 8.

⁸ Meter Serial No. 01328549.

⁹ Answer at 4.

¹⁰ Complaint at unnumbered 8–9.

¹¹ *Id.* at unnumbered 10–11.

¹² *Id.* at unnumbered 4.

¹³ *Id.* at unnumbered 6.

system, and did not explain how he reached his conclusion.¹⁴ Mr. Roberts acknowledged that the utility inspected for leaks.¹⁵ Dexter-Almo District stated it inspected the meter and meter pit serving the property for possible leaks.¹⁶ Mr. Roberts's evidence of incorrect usage amounts provided by Dexter-Almo District consisted of descriptions of his usage habits, size of the house, and fixtures installed.

Mr. Roberts requested a hearing on this matter.

LEGAL STANDARD

Under the filed-rate doctrine, KRS 278.160(2), a utility may not charge, demand, collect, or receive from any person greater or less compensation than what is filed in that utility's applicable tariff. Although the rates may not vary from the tariff, a customer may be entitled to a refund if that customer can establish an overage due to meter inaccuracy to the degree set forth in Commission regulations described below:

- 807 KAR 5:006, Section 17(1), directs meter testing to conform to the parameters set in 807 KAR 5:066, Section 15(2)(a).
- 807 KAR 5:066, Section 15(2)(a), is a table showing accuracy limits for meter testing, which require meters to test between 98.5 percent and 101.5 percent accuracy at three flow rates established in the table.¹⁷
- 807 KAR 5:006, Section 11(1), states:

If, upon periodic test, request test, or complaint test, a meter in service is found to be in error in excess of the limits established by 807 KAR 5:022, Section 8(3)(a)2.; 5:041,

¹⁴ Donald Roberts Response to Commission Staff's Request for Information (filed Sept. 9, 2021) at unnumbered 1.

¹⁵ *Id.*

¹⁶ Dexter-Almo District's Answer at 5.

¹⁷ Tests are to be performed at minimum, intermediate, and maximum flow rates as defined by 807 KAR 5:066, Section 15(2)(a). A flow rate under 98.5 percent indicates the meter is under-measuring flow by greater than 1.5 percent. A flow rate over 101.5 percent indicates the meter is over-measuring flow by greater than 1.5 percent.

Section 17(1); or 5:066, Section 15(4), additional tests shall be made in accordance with those same administrative regulations applicable for the meter type involved to determine the average meter error.

- 807 KAR 5:066, Section 15(4), states:

When upon periodic, request or complaint test, a meter is found to be in error in excess of the limits allowed by the commission's administrative regulations, three (3) additional tests shall be made: one (1) at seventy-five (75) percent of rated maximum capacity; one (1) at fifty (50) percent of rated maximum capacity; one (1) at twenty-five (25) percent of the rated maximum capacity. The average meter error shall be the algebraic average of the errors of the three (3) tests.

- 807 KAR 5:006, Section 11(2)(a), allows a bill adjustment “[i]f test results on a customer's meter show an average meter error greater than two (2) percent fast or slow, or if a customer has been incorrectly billed for another reason”¹⁸

If a meter is tested by a utility and by the Commission and the testing reflects that the meter is within accuracy parameters established by Commission regulations based on industry standards, and there is no evidence that the meter was misread, then a rebuttable presumption exists that the water went through the meter.¹⁹

Regarding Mr. Roberts’ request for a hearing, KRS 278.260(2) provides that the Commission may dismiss a complaint without a hearing if, in the Commission’s opinion, a hearing is not necessary in the public interest or for the protection of substantial rights.

¹⁸ An average meter error that is greater than or equal to two percent fast entitles the customer to a refund due to over-measurement of flow. An average meter error that is greater than or equal to two percent slow entitles the utility to recover for under-measurement of flow.

¹⁹ See *Tackett v. Prestonsburg Water Co.*, 38 S.W.2d 687 (Ky. 1931); *Louisville Tobacco Warehouse Co. v. Louisville Water Co.*, 172 S.W. 928 (Ky. 1915); Case No. 2011-00414, *Moore’s Chapel A.M.E. Church v. Water Service Corporation of Kentucky* (Ky. PSC Sept. 17, 2012), Order at 3–4; Case No. 2006-00212, *Robert Young Family v. Southeastern Water Association, Inc.* (Ky. PSC Feb. 26, 2007), Order at 3.

METER TESTING

Dexter-Almo District removed and replaced Mr. Roberts' first meter upon his request on or about October 31, 2019. Dexter-Almo District removed and replaced Mr. Roberts' second meter on or about August 26, 2021, after Mr. Roberts filed his complaint. Dexter-Almo District tested this meter, which was within 807 KAR 5:066, Section 15(2)(a) accuracy limits for minimum and intermediate flow but was 2.3 percent fast at maximum flow.²⁰ Dexter-Almo District did not perform a secondary test to determine average meter error.

The Commission ordered its own test of the second meter, performed by Louisville Water Company, on December 10, 2021.²¹ The results were within 807 KAR 5:066, Section 15(2)(a) accuracy limits for minimum and intermediate flow but was 2.2 percent fast at maximum flow.²² Because the maximum flow result was outside accuracy limits required by 807 KAR 5:006, Section 17(1), additional testing was conducted pursuant to 807 KAR 5:006, Section 11(1). Pursuant to 807 KAR 5:066, Section 15(4), average meter error was determined by averaging three tests—at 75, 50, and 25 percent of rated maximum capacity. At 75 percent, the result was 101.8 percent accurate. At 50 percent, the result was 101.3 percent accurate. At 25 percent, the result was 100.2 percent accurate. The average of these tests was 101.1 percent or an average error of 1.1 percent fast.

²⁰ Dexter-Almo District's Answer at Exhibit C.

²¹ Order (Ky. PSC Nov. 29, 2021).

²² Louisville Water Company Meter Test Results (filed Jan. 20, 2022).

FINDINGS

Having reviewed Mr. Roberts's complaint and the case record and being otherwise sufficiently advised, the Commission finds that the evidence of record indicates that the meter at issue tested within the accuracy standards, and therefore the complaint should be dismissed. Under 807 KAR 5:006, Section 11(2)(a), a bill adjustment is allowed "[i]f test results on a customer's meter show an average meter error greater than two (2) percent fast or slow, or if a customer has been incorrectly billed for another reason" Although the Commission's test results showed that the average meter error for the second meter was 1.1 percent fast, this does not meet the two percent threshold required by 807 KAR 5:006, Section 11(2)(a), for a billing adjustment. Mr. Roberts did not establish that he had "been incorrectly billed for another reason." Mr. Roberts did not cite any specific evidence that Dexter-Almo District committed fraud, failed to read his meter, or read his meter incorrectly.

The Commission has repeatedly found that evidence of home size and descriptions of water usage does not constitute sufficient evidence to overcome the rebuttable presumption that the amount of water reported through the meter upon testing was correct.²³ The Commission takes administrative notice that the 4,500 gallons or less per month Mr. Roberts was billed for was not significantly greater than the average Dexter-Almo District residential customer's usage of 3,790 gallons per month.²⁴

²³ Case No. 1996-00368, *Marcinek v. Kentucky-American Water Co.*, (Ky. PSC Apr. 3, 1997), Order, finding that 8,800 gallons in one month for a residence was not excessive; Case No. 2008-00513, *Rogers v. Northeast Woodford Water District* (Ky. PSC Feb. 26, 2010), Order at 2, 4, finding that 13,000 gallons in one month for a residence was not excessive; Case No. 2011-00414, *Moore's Chapel A.M.E.*, (Ky. PSC Sept. 17, 2012), Order (finding that 89,000 gallons in one month for a church was not excessive).

²⁴ Five-year average. See Appendix.

Regarding Mr. Roberts's request for a hearing, the Commission concludes that a hearing is not necessary in the public interest. As noted above, under longstanding precedent, when a meter tests as accurate, there is a rebuttable presumption that the water the customer is billed for using actually flowed through the meter in the amount billed. The evidence of record supports a finding that Mr. Roberts was accurately billed for his usage. Mr. Roberts's allegations of fraud or mistake are not supported by any evidence of record. For these reasons, the Commission finds that a hearing is not necessary in the public interest.

IT IS THEREFORE ORDERED that:

1. Mr. Roberts's complaint is dismissed.
2. A copy of this Order shall be served upon Mr. Roberts by U.S. mail to 112 O'Bryan Circle, Almo, Kentucky 42020.
3. This case is closed and removed from the docket.

By the Commission

ENTERED
FEB 10 2022
rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2021-00319 DATED FEB 10 2022

Year	Beginning Customer Count*	Ending Customer Count*	Average Customer Count	Residential Usage*,**	Average Yearly Usage per Customer**	Average Monthly Usage per Customer**	AVERAGE COST***
2020	785	785	785	34917	44.480	3.707	27.71
2019	783	785	784	34794	44.380	3.698	27.65
2018	791	783	787	33671	42.784	3.565	26.78
2017	772	791	782	36212	46.337	3.861	28.71
2016	787	772	780	36748	47.143	3.929	29.16
Case 2019-00354						3790	28.25

NOTES:

* From the PSC Annual Report Filed By Dexter-Almo District

** Omitting 1,000

*** Calculated from the Tariff rate schedule on file in the Dexter-Almo District's 2019 PSC Tariff

Donald Roberts
112 O'Bryan Circle
Almo, KENTUCKY 42020

*Dexter-Almo Heights Water District
351 Almo Road
Almo, KY 42020