

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

RICHARD HALL JOUETT)	
)	
COMPLAINANT)	
)	CASE NO.
V.)	2023-00115
)	
KENTUCKY-AMERICAN WATER COMPANY)	
)	
DEFENDANT)	

ORDER

On April 3, 2023, Richard Hall Jouett filed a formal complaint against Kentucky-American Water Company (Kentucky-American), alleging that Kentucky-American overcharged him for water usage. The complaint argued that Mr. Jouett, should be charged in January 2023 only what he was charged for water service for the same period in 2022 because the usage amount for January 2023 was more than triple the amount for the same period in 2022.¹ Mr. Jouett requested that his bill to be adjusted to decrease the usage and bill amount. On May 2, 2023, the Commission entered an Order stating that it was unable to determine whether the complaint established a *prima facie* case and required Mr. Jouett to file copies of his Kentucky-American bills from January 2022 through the current billing period, copies of written requests for meter testing, and copies of the meter test reports. On May 8, 2023, Mr. Jouett filed copies of his water bills from January 22, 2022, to the present, copies of written requests to Kentucky-American for the

¹ Richard Hall Jouett Complaint (filed Apr. 3, 2023) at unnumbered 1 and 2.

meter to be tested, and a timeline of communication between he and Kentucky-American.²

LEGAL STANDARD

Under 807 KAR 5:006, Section 11(2)(a), a bill adjustment is required “[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.” Section 15(4) of 807 KAR 5:066 states that for the purposes of a billing adjustment the average error should be determined by testing the meter at 75, 50, and 25 percent of its maximum rated capacity and taking the algebraic average of those results.

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 stated usage went through the meter.³

If a complaint fails to establish a *prima facie* case or conform to the administrative regulation, 807 KAR 5:001, Section 20(4)(a)(1) provides that the complainant be notified and provided an opportunity to amend the complaint within a specified time. Additionally, 807 KAR 5:001, Section 20(4)(a)(2) provides that if the complaint is not amended within the time that the Commission grants, then the complaint shall be dismissed.

² Richard H. Jouett's Response to Commission Order (filed May 8, 2023).

³ *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).

DISCUSSION AND FINDINGS

The Commission tested the meter in question and the meter test⁴ was performed in accordance with 807 KAR 5:066, Section 15(2)(a) for a positive displacement meter. The meter test was repeated two times for each of: the minimum flow rate of ¼ gallon per minute (gpm), the intermediate flow rate of 2 gpm, and the high flow rate of 15 gpm as prescribed in 807 KAR 5:066, Section 15(3). At each flow test, the resulting two accuracies were then averaged for a representative accuracy result and compared with the accuracy requirements prescribed by 807 KAR 5:066, Section 15(2)(a). The accuracy results of this meter test were 102 percent at the minimum flow rate of 1/4 gpm, 100 percent at the intermediate flow rate of 2 gpm, and 98.75 percent at the maximum flow rate of 15 gpm. Notably, these results are consistent with the meter test performed by Kentucky-American, which found the meters accuracy to be 101, 100, and 99.6 percent at minimum, intermediate, and maximum flow rates.⁵

The accuracy results of the Commission's test indicate that the meter failed the minimum flow test, as the required accuracy at minimum flow was between 95 percent and 101 percent of actual flow, and, as noted above, the test conducted on behalf of the Commission reflected 102 percent at the minimum flow rate. As required by 807 KAR 5:066, Section 15(4), three additional tests of the meter were conducted for the determination of meter error for bill adjustment purposes. The additional tests resulted in an average meter error of negative 0.65 percent—meaning, on average, the meter was likely undercharging Mr. Jouett by 0.65 percent. Pursuant to 807 KAR 5:006, Section

⁴ Commission Meter test attached as Appendix to this Order.

⁵ Kentucky-American's meter test also attached as Appendix to this Order.

11(2)(a), the average meter error of 0.65 does not require any billing adjustment by the utility, because it is not more than 2 percent.

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that Mr. Jouett has not established that the meter at issue did not accurately measure water usage based on the above discussion.

In this matter, Mr. Jouett failed to provide a factual basis to support his contention that the meter at issue overbilled his account because it did not accurately measure water usage. Mr. Jouett presented circumstantial evidence regarding alleged overbilling that the bill in question is three times higher than his previous bills for this time period. On the bill in question, it shows usage of 6,732 gallons. That bill as well as other bills for the preceding year, which were filed in the record, show that usage was 2,244 gallons for the same period last year and that usage in preceding year was never more than half that of the period in question. Mr. Jouett also stated that he has lived at his residence for 34 years and that his consumption has been constant. The data log of Mr. Jouett's usage, which he requested from Kentucky-American and filed in this case, shows a major spike in Mr. Jouett's residence's consumption during a 20-hour period from 14:47 on January 18, 2023, until 10:47 on January 19, 2023, showing much higher than normal consumption for water according to the data log. Mr. Jouett provided statements that he inspected all sources of water usage in his residence to include all faucets, sinks, toilets, dishwasher, washing machine, and hot water heater and found no evidence of a leak. Mr. Jouett also stated that he surveyed the yard above the outside water pipes and found no evidence of a leak. Mr. Jouett stated that he was out of town for five days during the billing cycle so that when he received the statement he immediately called a neighbor

who has access to his house and this neighbor inspected for leaks inside and outside of the house and found none. The Commission finds that the circumstantial evidence provided by Mr. Jouett is not sufficient to overcome the rebuttable presumption that the amount of water reported through the meter was correct.

The Commission's regulations provide that all water sold by a utility shall be upon the basis of metered volume sales.⁶ Pursuant to KRS 278.160(2), no person shall receive service from a utility for compensation greater or less than that prescribed within the utility's filed schedules. KRS 278.160(2) codifies the "filed rate doctrine," which requires strict application of tariffed rates and bars equitable defenses against a utility billing its filed rates for services provided.⁷ The Commission has consistently applied this requirement in holding that customers are responsible for paying for all water that passes through their meters.⁸

Mr. Jouett failed to provide evidence that the meter at issue was defective, or otherwise did not accurately measure water usage within the requirements of Kentucky-American's tariff or the Commission's regulations. If a meter is tested by a utility and by the Commission, the testing reflects that the meter is within accuracy parameters established by Commission regulations, and there is no evidence that the meter was

⁶ 807 KAR 5:066, Section 13(1).

⁷ See *Boone County Sand and Gravel v. Owen County Rural Electric Coop. Corp.*, 779 S.W.2d 224, 226 (Ky. App. 1989).

⁸ See Case No. 2008-00513, *Rogers v. Northeast Woodford County Water Association* (Ky. PSC Feb. 26, 2010); Case No. 2005-00035, *Lewis v. Southeastern Water Association* (Ky. PSC Mar. 13, 2007).

misread, then a rebuttable presumption exists that the water went through the meter.⁹ The Commission finds that Mr. Jouett has not overcome that rebuttable presumption.

Having reviewed the evidentiary record and being otherwise sufficiently advised, the Commission finds that because Mr. Jouett is alleging that Kentucky-American overcharged him for water service and because the evidence in the record indicates that Mr. Jouett's meter has tested accurately, Mr. Jouett shall have an additional 20 days from the date of service of this Order to submit additional evidence in support of his complaint. Commission regulation 807 KAR 5:001, Section 20(4)(a)(2) provides that if the complaint is not amended within the time that the Commission grants, then the complaint shall be dismissed.

IT IS HEREBY ORDERED that:

1. Within 20 days of the date of service of this Order, Mr. Jouett may file additional information into the record in support of his complaint.
2. Mr. Jouett shall file the documents pursuant to ordering paragraph 1 by electronic mail to PSCED@ky.gov or by US Mail to P.O. Box 615, Frankfort KY 40602-0615, referencing the case number for this proceeding.
3. A copy of this Order shall be served on the Complainant, Richard Jouett, by U.S. certified mail, return receipt requested at 2379 Harrods Pointe Trace, Lexington, Kentucky 40514.

⁹ See Case No. 2011-00414, *Moore's Chapel A.M.E. Church vs. Water Service Corporation of Kentucky* (Ky. PSC Sept. 17, 2012), Order at 3–4; Case No. 2006-00212, *Robert Young Family vs. South Eastern Water Association, Inc.* (Ky. PSC Feb. 26, 2007), Order at 3.

PUBLIC SERVICE COMMISSION

Hunt Clark

Chairman

Angie Hatten *by KAC*
w/permission

Vice Chairman

Mary Patterson

Commissioner



ATTEST:

Linda E. Bidwell
Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2023-00115 DATED OCT 10 2023

SEVEN PAGES TO FOLLOW



Andy Beshear
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Secretary
Energy and Environment Cabinet

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Kent A. Chandler
Chairman

Angie Hatton
Vice Chairman

Mary Pat Regan
Commissioner

**METER STANDARDS LABORATORY
REQUEST METER TEST REPORT
[Pursuant to 807 KAR 5:066, Section 15(2)(a)]
WATER**

Complaint #: 2023-00115

CUSTOMER: Richard Jouett

UTILITY: Kentucky-American Water Company

TEST DATE: 8/15/2023

TESTING FACILITY: Louisville Water Company

DISCUSSION:

The Division of Inspections (DOI) received a request from the Consumer Services Branch to have Richard Jouett's meter tested by Kentucky Public Service Commission (Commission) as per 807 KAR 5:006, Section 19(2).

On August 15, 2023, Mr. Jouett's meter was tested by Louisville Water Company, an independent third party representing the Commission. Louisville Water Company's meter testing facility is located at 4801 Allmond Ave. Louisville, KY 40214. Records indicate that Mr. Jouett's meter was first tested by Kentucky-American Water Company on March 21, 2023. (See attachment A)

FINDINGS:

The request test was performed in accordance with 807 KAR 5:066, Section 15(2)(a) for a positive displacement meter.

The meter test was repeated two times for each of: the minimum flow rate of ¼ gallon per minute ("gpm"), the intermediate flow rate of 2 gpm, and the high flow rate of 15 gpm as prescribed in 807 KAR 5:066, Section 15(3). At each flow test, the resulting two accuracies were then averaged for a representative accuracy result and compared with the accuracy requirements prescribed by 807 KAR 5:066, Section 15(2)(a).

The accuracy results of this meter tests were 102 percent at the minimum flow rate of 1/4 gpm, 100 percent at the intermediate flow rate of 2 gpm, and 98.75 percent at the maximum flow rate of 15 gpm.

These accuracy results indicate that the meter failed the low flow test.

As required by 807 KAR 5:066, Section 15(4), three additional tests of the meter were conducted for the determination of meter error for bill adjustment purposes. The additional tests resulted in an average meter error of 0.65 percent.

Pursuant to 807 KAR 5:006, Section 11(2)(a), the average meter error of 0.65 does not require any billing adjustment by the utility.

REPORT SUBMITTED BY:

Date: August 23, 2023

Utility Inspector
Division of Inspections
Kentucky Public Service Commission

Attachments:

- A. Kentucky-American Water Company's Meter Test Results
- B. Louisville Water Company's Meter Test Results

Attachment A

Kentucky-American Water Company's Meter Test Results



Kentucky American Water - Customer Meter Test Form

BENCH 2 (5/8") Only

CUSTOMER NAME: _____ ACCT # _____

SERVICE ADDRESS: _____ PREMISE # _____

METER SIZE: 5/8" NUMBER: _____ DATE: _____

FIRST TEST READINGS

<u>Volume / Test</u>	<u>GPM</u>	<u>Adj. Read</u>	<u>Final Read</u>	<u>Test %</u>	<u>Required Accuracy</u>
<u>1 CF / LOW</u>	<u>1/4</u>	_____	_____	_____	<u>95%-101%</u>
<u>1 CF / MED</u>	<u>2</u>	_____	_____	_____	<u>98.5%-101.5%</u>
<u>10 CF / HIGH</u>	<u>15</u>	_____	_____	_____	<u>98.5%-101.5%</u>

IF ANY OF THE TESTS ABOVE ARE NOT WITHIN THE REQUIRED ACCURACY LIMITS THEN FURTHER TESTING IS REQUIRED BELOW

SECOND TEST READINGS

<u>Flow % of Capacity / Volume / Test</u>	<u>GPM</u>	<u>Adj. Read</u>	<u>Final Read</u>	<u>Test %</u>	<u>% Accuracy</u>
<u>25% / 1 CF / LOW</u>	_____	_____	_____	_____	<u>95%-101%</u>
<u>50% / 1 CF / MED</u>	_____	_____	_____	_____	<u>98.5%-101.5%</u>
<u>75% / 10 CF / HIGH</u>	_____	_____	_____	_____	<u>98.5%-101.5%</u>

First Test Series % Average: _____ Second Test Series % Average: _____

Less Standard: 100% Equal % of Error: _____ Fast: _____ Slow: _____

Before Test Reading: _____ After Test Reading: _____

Customer Witness? Yes: _____ No: _____

IF % OF ERROR IS GREATER THAN 2%, COMPLETE APPROPRIATE SECTION BELOW.

Length of time error is known to have existed: _____

FAST METER basis for refund: _____ Amount of refund: _____

SLOW METER basis for additional Bill: _____ Amount of additional Bill: _____

Comments: _____

Copy To: _____ Disputes: _____ Meter Tech: _____

Attachment B

Louisville Water Company's Meter Test Results

**PUBLIC SERVICE COMMISSION
METER STANDARDS LABORATORY
METER TEST RESULTS**

Customer: Richard Jouett
Utility: KY-American Water Company
Meter Test Facility: Louisville Water Company

Date: 8/15/2023
Tester: Angela Thacker

Complaint Meter

Type: Hersey Positive Displacement
Serial # 13252546

As Found Reading: 055829.44
As Left Reading: 055924.40

1/4 GPM	End	<u>55842.02</u>		
	Start	<u>55841.00</u>		
	Accuracy	<u>102.0%</u>	Failed	
1/4 GPM	End	<u>55853.90</u>		
	Start	<u>55852.88</u>		
	Accuracy	<u>102.0%</u>	Failed	
Average of 2 test runs		<u>102.0%</u>	Failed	
2 GPM	End	<u>55843.02</u>		
	Start	<u>55842.02</u>		
	Accuracy	<u>100.0%</u>	Pass	
2 GPM	End	<u>55854.90</u>		
	Start	<u>55853.90</u>		
	Accuracy	<u>100.0%</u>	Pass	
Average of 2 test runs		<u>100.0%</u>	Pass	
15 GPM	End	<u>55852.88</u>		
	Start	<u>55843.02</u>		
	Accuracy	<u>98.6%</u>	Pass	
15 GPM	End	<u>55864.79</u>		
	Start	<u>55854.90</u>		
	Accuracy	<u>98.9%</u>	Pass	
Average of 2 test runs		<u>98.75%</u>	Pass	
SUMMARY OF METER TEST ACCURACY RESULTS				
LOW FLOW 1/4 GPM		<u>102.0%</u>	Pass	Accuracy Limits $\geq 90\%$ and $\leq 101\%$
MED. FLOW 2 GPM		<u>100.0%</u>	Pass	Accuracy Limits $\geq 98.5\%$ and $\leq 101.5\%$
HIGH FLOW 15 GPM		<u>98.75%</u>	Pass	Accuracy Limits $\geq 98.5\%$ and $\leq 101.5\%$

ADDITIONAL TEST RUNS

15 GPM End 55874.70
 Start 55864.79
 % Accuracy 99.10

15 GPM End 55904.50
 Start 55894.58
 % Accuracy 99.20

Average of 2 test runs **99.15**

10 GPM End 55884.62
 Start 55874.70
 % Accuracy 99.20

10 GPM End 55914.44
 Start 55904.50
 % Accuracy 99.40

Average of 2 test runs **99.30**

5 GPM End 55894.58
 Start 55884.62

 % Accuracy 99.60

5 GPM End 55924.40
 Start 55914.44
 % Accuracy 99.60

Average of 2 test runs **99.60**

Average Meter Accuracy Results **99.35**

Average Meter Error of the three tests **0.65** Accuracy Limits $\pm 2\%$

*Kentucky-American Water Company
2300 Richmond Road
Lexington, KY 40502

*Jeffrey Newcomb
Kentucky-American Water Company
2300 Richmond Road
Lexington, KY 40502

*Richard Jouett
2379 Harrods Pointe Trace
Lexington, KENTUCKY 40514