

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

TAMMY ROGERS)	
)	
COMPLAINANT)	
)	
V.)	CASE NO.
)	2008-00513
NORTHEAST WOODFORD COUNTY)	
WATER DISTRICT)	
)	
DEFENDANT)	

O R D E R

Tammy Rogers filed a complaint against Northeast Woodford County Water District (“Northeast Woodford”) pursuant to KRS 278.260. In her complaint, she alleges that her water meter was not properly and consistently checked by the utility. She also suggests that Northeast Woodford failed to properly inform its customers about test results demonstrating that the utility’s water had the presence of coliform bacteria. By this Order, the Commission denies Mrs. Rogers’ complaint.

BACKGROUND

In August 2008, Northeast Woodford conducted a routine sampling of its water system. Two of the nine samples tested positive for coliform bacteria. Immediately after the test results were received, Northeast Woodford conducted additional tests for coliform bacteria and all of the test results were negative. The utility issued notices to its customers about the positive samples at the same time it issued customers’ bills in November 2008.

When Mrs. Rogers received her water bill in November 2008, she noticed that it was significantly higher than the previous months' bills. The statement reflected that her residence had consumed approximately 13,000 gallons of water. During 2008, Mrs. Rogers' monthly usage, according to Northeast Woodford's billing records, ranged from 5,000 gallons to 9,000 gallons. Mrs. Rogers was billed for 5,000 gallons of water for seven of the ten previous months and once each at 7,000 gallons, 8,000 gallons, and 9,000 gallons.

After receiving the unusually high water bill, Mrs. Rogers contacted Northeast Woodford. A number of other Northeast Woodford customers also contacted the utility about unusually high water bills that month and, in response, Dale Gatewood, Northeast Woodford's superintendent, reread the meters of the customers who contacted the utility. Mr. Gatewood discovered no errors in the meter readings.

Unsatisfied with the utility's response, Mrs. Rogers filed this complaint. In her complaint, she alleges that her water meter was not properly and consistently checked. She also suggests that Northeast Woodford failed to properly inform its customers about test results demonstrating that the utility's water had the presence of coliform bacteria. Mrs. Rogers claims that her family suffered illnesses as a result of bacteria in the water. She seeks an Order requiring that the utility "adjust all of the bills for the month [of November 2008] and send some type of apology letter to it's [sic] customers and let them know that they will have appropriate meter readings" in the future.

Northeast Woodford has denied any wrongdoing. It maintains that the meters were read properly and consistently. It also disclaims any correlation between possible coliform

bacteria in its water system and the Rogers' illnesses and contends that it complied with regulations in issuing the notice.

ANALYSIS

The Commission is empowered by KRS 278.260 to hear "complaints as to the rates or service of any utility." The Commission has the power to dismiss any 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. The Commission finds that a decision in this case can be based on a review of the existing record and that a hearing is not necessary in the public interest or for the protection of substantial rights.

Pursuant to KRS 278.160, a utility must charge its tariffed rates to all of its customers. No person shall receive service from a utility for compensation greater or less than that prescribed within the utility's filed schedules.¹ Customers are responsible for paying for all water that passes through their meters.

Mrs. Rogers has consistently maintained that there were no mechanical problems with the meter but, rather, the problem was a failure in reading the meters on a regular basis. She suggests that Northeast Woodford did not read her meter each month, estimated her usage without indicating the estimated reading on the billing statement, and then adjusted her bill in November 2008 when the meter was read.

The evidence supports Mrs. Rogers' contention that her unusually high bill was not a result of an improperly functioning meter. After the complaint was filed, Commission Staff tested Mrs. Rogers' meter at their laboratory. The meter proved to be within the regulation's accuracy limits for high flow but not within the limits for low and intermediate

¹ *Boone County Sand and Gravel Co. v. Owen County Rural Elec. Coop. Corp.*, 779 S.W.2d 224 (Ky. Ct. App. 1989).

flow. It was registering only 98 percent of the water at an intermediate-flow test rate and approximately half of the water at a low-flow test rate of a quarter gallon per minute.² In other words, the meter failed to account for all the water passing through the meter. For every 10 gallons of water that was passing through the meter at a low-flow rate, the meter registered approximately 5.27 gallons.³

No evidence has been presented that would enable the Commission to adjust Mrs. Rogers' contested water bill from November 2008. Because KRS 278.160 requires a utility to charge its rates for all water used by its customers, Northeast Woodford is obligated to charge Mrs. Rogers for all water passing through an accurate meter, even if that water was used in previous months.⁴ KRS 278.225 permits a utility to charge for unbilled service up to two years after the date of service, but no evidence was presented that demonstrated that Northeast Woodford attempted to bill Mrs. Rogers for water passing through her meter more than two years ago. Accordingly, the Commission must deny Mrs. Rogers' complaint with respect to improper billing.

With respect to the water testing that showed coliform bacteria in Northeast Woodford's system, the Commission's jurisdiction extends to a utility's service, which includes "the purity, pressure, and quantity" of water.⁵ The evidence offered demonstrates that the presence of coliform bacteria in Northeast Woodford's system was an isolated

² For the Commission's accuracy standards for water meters, see 807 KAR 5:066, Section 15.

³ See Public Service Commission Meter Standards Laboratory Meter Results (filed Jul. 2, 2009).

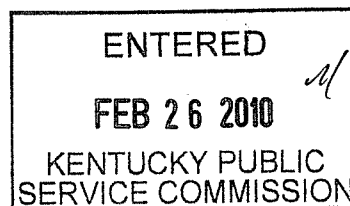
⁴ Under no circumstances should this statement be interpreted as the Commission's condoning a utility's attempt to estimate usage without proper justification and notice to the consumer. The Commission finds that there is insufficient evidence in this case to demonstrate that type of action by Northeast Woodford. If there were sufficient evidence, the Commission would consider whether penalties were appropriate under KRS 278.990, whether the utility's actions justified removal of the water district commissioners under KRS 74.455, or whether Kentucky law afforded other remedial measures.


⁵ See KRS 278.040; KRS 278.010(13).

event. There is no evidence that the utility did not comply with the Kentucky Division of Water's and the U.S. Environmental Protection Agency's administrative regulations.⁶ In addition, there is no evidence in the record that supports a finding that Northeast Woodford's "rules, regulations, practices, equipment, appliances, facilities or service . . . or method of manufacture, distribution, transmission, storage or supply employed . . . are unjust, unreasonable, unsafe, improper, inadequate or insufficient."⁷ Accordingly, Mrs. Rogers' complaint as it relates to Northeast Woodford's water quality, testing, and notice of coliform bacteria should be denied.

IT IS THEREFORE ORDERED that the complaint of Tammy Rogers against Northeast Woodford is denied.

By the Commission



ATTEST:

Executive Director

⁶ We note that, although those agencies have primary responsibility for enforcing their own regulations, Commission regulations require water utilities to conform to the legal requirements of the Division of Water related to potability of the water. 807 KAR 5:066, Section 3. The Commission has promulgated that regulation under KRS 278.040, which provides us with jurisdiction over service of a utility. We, therefore, are not intruding on the authority of those agencies.

⁷ KRS 278.280(1).

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