

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

RONALD D. MCGINNIS)	
COMPLAINANT)	
V.)	
NORTH MERCER WATER DISTRICT)	CASE NO. 2016-00154
DEFENDANT)	

ORDER

On April 7, 2016, Complainant Ronald D. McGinnis (“McGinnis”) filed a formal complaint against North Mercer Water District (“North Mercer”) alleging that North Mercer improperly denied service to a tenant of one of his rental properties at 244 Cap Bottom Lane, Harrodsburg, Kentucky (“244 Cap Bottom”). North Mercer filed a Response refuting the claim that it has ever improperly denied service to a tenant of the property in question and requesting that the complaint be dismissed.

In his complaint, McGinnis states that on May 21, 2015, he requested service from North Mercer in his name be shut off at 244 Cap Bottom Lane.¹ McGinnis called North Mercer again on June 3, 2015, because service was still visible from the outside faucet and was told at that time that his renters, Kristen Young and David Jones, may have broken the lock and used service.² Renter Kristen Young remained at 244 Cap Bottom

¹ Complaint (filed Apr. 7, 2016) at 1.

² *Id.* at 1–2.

until November 2015, when she was finally evicted.³ McGinnis claims there was no further communication between himself and North Mercer until early March 2016. He claims that in March 2016, his next renter requested service and was being denied until a charge of \$250.17, plus a \$102.00 deposit and reconnect fee, were paid.⁴

In its Response, North Mercer claims that there has never been a request for service by a tenant at 244 Cap Bottom Lane, and at no time has it denied service to a tenant at this address.⁵ At the time of its Response, North Mercer maintained that the only request for service since January 2014 at 244 Cap Bottom was by McGinnis.⁶ North Mercer states that while making a visual inspection of its system on March 10, 2016, it was discovered that the meter pit servicing 244 Cap Bottom had been opened, the meter lock had been broken, and water was being used. On March 11, 2016, North Mercer pulled the meter from the meter box and the “data log” at that time showed that no water was used between the “lock off” date of May 21, 2015, and November 14, 2015; rather, water began being used on November 15, 2015.⁷ The day after the meter was pulled McGinnis called North Mercer and stated he wanted water turned on at 244 Cap Bottom. He was informed that the meter had been pulled the day before and the charges accrued for water use and tax were \$240.29; a broken lock fee of \$10.50; and a service fee of \$30.00, for a total of \$280.79.⁸

³ Complainant’s Supplemental Position Statement (filed Feb. 28, 2017).

⁴ Complaint at 2.

⁵ North Mercer’s Response (“Response”) at 3, (filed Oct. 10, 2016).

⁶ *Id.*

⁷ *Id.* at 2.

⁸ *Id.*

One round of discovery was completed. In response to information requests, North Mercer maintained that McGinnis had contacted North Mercer in March 2016 to re-connect service, but did not indicate he was seeking service for any tenant.⁹ McGinnis filed additional information claiming that on March 15, 2016, a renter asked for North Mercer service at 244 Cap Bottom and was denied.¹⁰ McGinnis also claims that North Mercer is denying water service at two other properties he owns, at 405 Cap Bottom Lane and 3230 Perryville Road.¹¹

North Mercer filed a letter on February 10, 2017, which states that McGinnis never contacted North Mercer to report that water was still being used on his property after the meter had been locked.¹² North Mercer states that it would have checked the property had McGinnis called and reported this, and as per its practice when customers call, a work order would have been created.¹³ North Mercer also states that McGinnis had not requested service at 405 Cap Bottom or 3230 Perryville Road, and that no meter or account with North Mercer has ever existed for the 3230 Perryville Road property.¹⁴ North Mercer notes a provision in its Tariff on file with the Commission addressing Discontinuance of Service by Utility, which allows North Mercer to refuse or discontinue service for fraudulent or illegal use of service or for non-payment of bills.¹⁵

⁹ North Mercer's Response to Staff's First Request for Information at 1–2 (filed Dec. 6, 2016).

¹⁰ McGinnis Additional Information at 3 (filed Dec. 12, 2016).

¹¹ *Id.*

¹² North Mercer Letter at 2 (filed Feb. 10, 2017).

¹³ *Id.*

¹⁴ *Id.* at 3.

¹⁵ *Id.* at 1, and North Mercer's Tariff attached thereto.

McGinnis filed a supplemental statement on February 28, 2017, which introduced a new request that he should not be responsible, pursuant to 807 KAR 5:006 Section 13, for amounts due on his account after he requested termination of service.¹⁶ McGinnis therein also claims that North Mercer has wrongfully denied him service at two additional properties, 405 Cap Bottom Road and 3230 Perryville Road, and requests that he be permitted service at those properties.¹⁷

An informal teleconference was held on March 4, 2017. McGinnis confirmed at that time that he had personally contacted North Mercer in March 2016 to establish water service in his own name for tenant Patrick Jones at 244 Cap Bottom.¹⁸ He also confirmed he has never previously held an account with North Mercer for his properties at 405 Cap Bottom or 3230 Perryville Road, and that to his knowledge, no potential tenants for those properties had contacted North Mercer to establish service in their name(s).¹⁹ North Mercer informed Commission Staff that they had received a request for service from a potential tenant at 244 Cap Bottom, and informed her of the fees required to turn on service, as well as the requirement that McGinnis allow permission to establish service in her name, due to the earlier request by McGinnis that his permission be given to establish service in anyone else's name at 244 Cap Bottom.²⁰ North Mercer confirmed that it would

¹⁶ McGinnis Supplemental Statement at 2–3 and 5 (filed Feb. 28, 2017).

¹⁷ *Id.* at 4–5.

¹⁸ PSC IC Memo (Mar. 7, 2017).

¹⁹ *Id.*

²⁰ *See* Response at 1, 10 and North Mercer's Response to Staff's First Request at 1.

not deny the potential tenant service because of the outstanding balance on McGinnis's account for 244 Cap Bottom.²¹

At the conclusion of the IC, Staff requested that the parties file into the record any further information or documentation to be considered by the Commission, and advised that the matter would be presented to the Commission for a decision based upon the written record.²² McGinnis has since provided an addendum which, among other things, states he made phone calls to North Mercer to obtain an account in the name of tenant Patrick Jones for 244 Cap Bottom Lane.²³ North Mercer has since provided a supplemental filing including a work order arising from a telephone call on February 23, 2017, from a potential tenant of 244 Cap Bottom, Miranda Collins.²⁴ The work order shows that Ms. Collins was informed of the amounts that had to be paid for a deposit and unlock fee to turn on service, and that North Mercer would turn on service when these fees were received and McGinnis gave permission to put water in her name.²⁵

Having reviewed the record and being otherwise advised, the Commission finds that the record is complete and, pursuant to KRS 278.260(2), a hearing is not necessary in the public interest or for the protection of substantial rights. The Complainant has failed to carry his burden of providing evidence to support his assertion that North Mercer improperly denied service to a tenant at 244 Cap Bottom, 405 Cap Bottom, or 3230 Perryville Road. The Commission further finds insufficient support for McGinnis's

²¹ PSC IC Memo.

²² *Id.*

²³ McGinnis Addendum (filed Mar. 8, 2017).

²⁴ Second Supplemental Filing of Documents at 4–5 (filed Mar. 7, 2017).

²⁵ *Id.*

assertion that he is not responsible, pursuant to 807 KAR 5:006 Section 13, for amounts due on the account for 244 Cap Bottom after requesting termination. As the complainant in this matter, Mr. McGinnis bears the burden of providing evidence to support his assertion.²⁶

During the IC, Complainant confirmed that he had personally contacted North Mercer in March 2016 to establish service in his own name on behalf of renter Patrick Jones. Despite his subsequent attempt to clarify that he called North Mercer to establish service in the name of tenant Patrick Jones, Complainant has failed to present any evidence that any tenant at 244 Cap Bottom has ever applied for service in the tenant's name and been denied service by North Mercer. Likewise, Complainant has failed to present any evidence that any tenant has applied for service with North Mercer, or been denied the same for the properties at 405 Cap Bottom Road and 3230 Perryville Road. North Mercer is not required to establish service at these properties in McGinnis's name until the amount due on his account for 244 Cap Bottom is satisfied.

McGinnis has claimed he should not be responsible for the amount due on his account for 244 Cap Bottom pursuant to 807 KAR 5:006, Section 13, which provides:

(1)(a) A customer who requests that service be terminated or changed from one (1) address to another shall give the utility three (3) working days' notice in person, in writing, or by telephone, if the notice does not violate contractual obligations or tariff provisions.

(b) The customer shall not be responsible for charges for service beyond the three day notice period if the customer provides access to the meter during the notice period in accordance with section 20 of this administrative regulation.

²⁶ See *Energy Regulatory Comm'n v. Kentucky Power Co.*, 605 S.W.2d 46, 50 (Ky. App. 1980).

Both parties agree that on May 21, 2015, McGinnis requested that North Mercer read and lock the meter at 244 Cap Bottom. North Mercer's work orders provide that the meter was locked on May 26, 2015.²⁷ When North Mercer discovered the broken meter box during its system inspection and pulled the meter in March 2016, the data log showed that no water had been used between the "lock off" date of May 21, 2015, and November 14, 2015. Accordingly, it does not appear that this is a situation contemplated or applicable under 807 KAR 5:006 Section 13. The alleged theft of water for 244 Cap Bottom did not occur as a result of any failure on North Mercer's part to discontinue service pursuant to McGinnis' termination request. On the contrary, North Mercer locked the meter in a timely fashion, but six months later the lock was broken and water began being used at 244 Cap Bottom Lane. McGinnis was the property owner and named account holder for service with North Mercer at 244 Cap Bottom Lane prior to his termination request; at the time any alleged theft of service occurred; and subsequently through the current date. Accordingly, the Commission denies McGinnis's request to find that he is not responsible for the amounts due.

For these reasons, the Commission finds that the Complainant is not entitled to any relief and his complaint should be dismissed.

IT IS THEREFORE ORDERED that:

1. Complainant's complaint against North Mercer is dismissed.
2. This case is closed and removed from the Commission's docket.

²⁷ Response at 10.

By the Commission

ENTERED
JUL 27 2017
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Acting Executive Director

Case No. 2016-00154

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