

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BENT TREE CONDOMINIUM ASSOCIATION	)	
	)	
COMPLAINANT	)	
	)	
V.	)	CASE NO.
	)	2019-00133
	)	
KENTUCKY-AMERICAN WATER COMPANY	)	
	)	
DEFENDANT	)	

ORDER

On May 6, 2019, Bent Tree Condominium Association (Bent Tree), filed a formal complaint against Kentucky-American Water Company (Kentucky-American), alleging overbilling for water services provided at a meter location at its service address in Lexington, Kentucky. The Commission ordered Kentucky-American to satisfy or answer the complaint on May 14, 2019. Kentucky-American answered the complaint and filed a motion to dismiss on May 24, 2019. Kentucky-American and Bent Tree responded to two requests for information from Commission Staff. Bent Tree was granted leave to issue information requests to Kentucky-American, and the utility responded.

On August 24, 2021, Bent Tree filed a motion asking the Commission to order that Kentucky-American “forfeit \$8,035.12 billed to Bent Tree.” Kentucky-American filed a response to the motion, and Bent Tree filed a reply.

## LEGAL STANDARD

Commission regulation 807 KAR 5:001, Section 20, governs the filing of a formal complaint. In accordance with 807 KAR 5:001, Section 20(1)(c), a complaint must state “[f]ully, clearly, and with reasonable certainty, the act or omission” that the complaint alleges the utility failed to comply with, and facts with details of the alleged failure.

KRS 278.030(1) states that “[e]very utility may demand, collect and receive fair, just and reasonable rates” for services provided. KRS 278.030(2) states that “[e]very utility shall furnish adequate, efficient and reasonable service, and may establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service.” KRS 278.160 requires a utility to file with the Commission a written schedule of rates and conditions for service.

Under 807 KAR 5:006, Section 17(1), water meter testing must conform to the parameters set in 807 KAR 5:066, Section 15(2)(a), which contains a table showing accuracy limits for meter testing, requiring meters of this type (2” displacement) to test between 98.5 percent and 101.5 percent accuracy at high and intermediate flow rates established in the table and between 95 percent and 101 percent at the low flow rate established in the table. Under 807 KAR 5:006, Section 11(1):

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, 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.

Finally, 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 . . . .”

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.<sup>1</sup>

### BACKGROUND

Bent Tree is a customer for water services provided under tariff by Kentucky-American. The service is provided at two metering points at a service address of 401 Redding Road, Lexington, Kentucky. The meters, located at a street corner, are described by the parties as the “Redding Road” and “Kirklevington Road” meters. Water measured at the meters is distributed by Bent Tree to more than forty condominiums and is not metered by Bent Tree at individual units. The complaint concerns billing associated with the Kirklevington Road meter.

Although the complaint refers to rates charged by Kentucky-American to Bent Tree’s members, the condominium association’s members are not Kentucky-American customers and are not parties to this case. Rather, as noted in the Complaint, “members are billed [for water] by Bent Tree as part of their respective homeowner’s association fees.”<sup>2</sup>

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<sup>1</sup> *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).

<sup>2</sup> Complaint, paragraph 12.

## COMPLAINT AND RESPONSE

Bent Tree alleged that in July 2017, the consumption and billings for the Kirklevington Meter account nearly doubled and continued at unusually high rates through May 2018 and then returned to historical levels.<sup>3</sup> In October 2017, Bent Tree's president contacted Kentucky-American to "seek resolution of the unusually high consumption billed to Bent Tree."<sup>4</sup> Bent Tree requested that Kentucky-American test its meters. Both parties agree that on or about February 4, 2018, Kentucky-American installed new meters, including for the Kirklevington Road meter. These temporary meters were replaced two days later with meters capable of providing hourly readings. Communication between the parties continued throughout 2018, including meetings on March 9, 2018, and September 19, 2018. Bent Tree also engaged the services of a contractor to search for any leaks on the customer side of one of the Kentucky-American meters serving the property.

Bent Tree stated that the leak investigation occurred on May 25, 2018, but was unsuccessful, in part because the contractor was not able to access every individual condominium unit or perform tests with water service temporarily shut off to the buildings. Bent Tree acknowledged its contractor only searched for leaks below the Redding Road meter.<sup>5</sup> By then, both meters serving its property had been replaced, and the overall measured water usage had declined significantly.

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<sup>3</sup> Complaint, paragraph 14. Although Bent Tree did not amend its complaint, it later acknowledged the dispute involved the period between July 2017 and February 2018.

<sup>4</sup> Complaint, paragraph 15.

<sup>5</sup> Complaint, paragraph 19.

Bent Tree claimed the Kirklevington Road meter change “corrected the high volume issues and brought Bent Tree’s volume and billings on the Kirklevington meter back to historic normal levels.”<sup>6</sup> Kentucky-American asserted that usage associated with the Kirklevington Meter had declined prior to the meter replacements in February 2018.<sup>7</sup> Kentucky-American tested the original Kirklevington Road meter on February 7, 2018, and the meter was within regulatory standards.<sup>8</sup> Kentucky-American provided the test results to Bent Tree on February 27, 2018. Subsequently, at Bent Tree’s request, the Commission ordered a third-party test of the meter and the results<sup>9</sup> were within the meter accuracy standards established 807 KAR 5:066, Section 15.

### DISCUSSION AND FINDINGS

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that Bent Tree has not adequately established that the meter at issue did not accurately measure water usage. The Commission further finds that the complaint should be dismissed without a hearing pursuant to KRS 278.260(2).

A hearing is not statutorily required when a complaint is filed. KRS 278.260(2) provides that the Commission may “dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest or for the protection of substantial

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<sup>6</sup> Bent Tree’s Response to Commission Staff’s Second Request for Information (Staff’s Second Request) (filed July 2, 2020), Item 1(a).

<sup>7</sup> See Kentucky-American’s Responses to Commission Staff’s Second Request for Information (Staff’s Second Request) (filed Mar. 20, 2020), Item 3(b).

<sup>8</sup> Kentucky-American’s Responses to Staff’s Second Request, attachment at unnumbered page 116, meter test results for meter 60670947 showing 99.5%, 100.0%, and 99.0% accuracy at low, intermediate, and high flow, respectively.

<sup>9</sup> See Letter Filing Document into Record (Ky. PSC Aug. 18, 2021), at unnumbered page 2, Citco Water meter test results for meter 60670947 showing 99.0%, 99.0%, and 100.0 % accuracy at low, intermediate, and high flow, respectively.

rights.” Based upon the case record in this matter, the Commission finds that a hearing is not in the public interest or for the protection of substantial rights. This is because a party who files a complaint with the Commission has the burden of providing evidence to support that party’s assertion.<sup>10</sup> In this matter, Bent Tree failed to provide any factual basis to support its contention that the meter at issue did not accurately measure water usage. Further, while Bent Tree’s complaint alleged “unusual high rates” of billed usage through May 2018, that claim is not supported by billing records for Bent Tree’s account. The evidence of record demonstrates that water usage, as measure by the meter, had diminished before the Kirklevington Road meter was replaced in February 2018.

The Commission’s regulations provide that all water sold by a utility shall be upon the basis of metered volume sales.<sup>11</sup> Likewise, Kentucky-American’s tariff provides for sales by meter measurement only, with some exceptions not relevant to customers like Bent Tree.<sup>12</sup>

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 tarified rates and bars equitable defenses against a utility billing its filed rates for services provided.<sup>13</sup> The Commission has consistently applied this requirement in holding that

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<sup>10</sup> See *Energy Regulatory Comm'n v. Kentucky Power Co.*, 605 S.W.2d 46, 50 (Ky. App. 1980).

<sup>11</sup> 807 KAR 5:066, Section 13(1).

<sup>12</sup> Kentucky-American Tariff P.S.C. No. 6, 2nd Revised Sheet No. 23 (eff. June, 19, 1986) (this page was in effect through the end of the period in dispute).

<sup>13</sup> See *Boone County Sand and Gravel v. Owen County Rural Electric Coop. Corp.*, 779 S.W.2d 224, 226 (Ky. App. 1989).

customers are responsible for paying for all water that passes through their meters.<sup>14</sup> The same rationale applies here.

To obtain relief in a complaint proceeding under KRS 278.260, Bent Tree must prove that Kentucky-American has violated either its tariff or some other provision of law the Commission enforces.<sup>15</sup> Bent Tree 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 misread, then a rebuttable presumption exists that the water went through the meter.<sup>16</sup>

Finally, Bent Tree alleged Kentucky-American violated Commission regulations pertaining to customer complaint processing and meter testing and should therefore "forfeit" its claims for disputed amounts billed to it. Bent Tree also argued that even if Kentucky-American's measure of consumption is correct, "forfeiture to end the dispute between the Company and Bent Tree is permissible given the extenuating circumstances given precedent." This argument is foreclosed by KRS 278.160(2), which does not allow

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<sup>14</sup> 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).

<sup>15</sup> See Case No. 2005-00380, *Richard Dudley Ford vs. Louisville Gas and Electric Company* (Ky. PSC Aug. 25, 2006).

<sup>16</sup> 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.

any person to receive any service from any utility for compensation greater or less than that prescribed in its filed schedule of rates.<sup>17</sup>

Although the Commission finds Kentucky-American is entitled to collect the filed rates, Bent Tree's allegations regarding Kentucky-American's practices and procedures related to meter testing are concerning. Bent Tree alleged that after removing the Kirklevington Road meter, Kentucky-American placed the meter in service elsewhere. 807 KAR 5:006 Section 19(d) requires a utility to maintain meters removed from service for testing for a period of six months. The Commission will address this issue in a separate proceeding to be initiated by the Commission to investigate Kentucky-American's metering practices in general.

IT IS THEREFORE ORDERED that:

1. Bent Tree's complaint is denied.
2. Bent Tree's motion for relief from paying amounts disputed by Bent Tree is denied as moot.
3. The case is closed and removed from the Commission's docket.

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<sup>17</sup> See Case No. 2010-00130, *Norman D. Vernon vs. Louisville Gas and Electric Company* (Ky. PSC Dec. 21, 2011), Order (tariffed rate applies when meter tests within limits of Commission regulations).



PUBLIC SERVICE COMMISSION

  
\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Vice Chairman

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Commissioner



ATTEST:

  
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