

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ROBERT D. HOB DY	)	
	)	
COMPLAINANT	)	
	)	
V.	)	CASE NO.
	)	2020-00033
	)	
KENTUCKY-AMERICAN WATER COMPANY	)	
	)	
DEFENDANT	)	

ORDER

On February 3, 2020, Robert D. Hobdy filed a formal complaint with the Commission against Kentucky-American Water Company (Kentucky-American) stating that his account was overbilled due to a faulty meter. Mr. Hobdy asserted that Kentucky-American should be required to reimburse him for the alleged overcharged consumption.

LEGAL STANDARD

The Commission has original jurisdiction over complaints as to rates or service of any utility pursuant to KRS 278.260. In a formal complaint filed pursuant to 807 KAR 5:001, Section 20, the complainant bears the burden of proof in matters before an administrative body.<sup>1</sup>

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

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<sup>1</sup> *Energy Regulatory Comm'n v. Kentucky Power Co.*, 605 S.W.2d 46, 50 (Ky. App. 1980).

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.<sup>2</sup>

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.<sup>3</sup>
- 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, 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

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<sup>2</sup> 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.

<sup>3</sup> 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.

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 ....”<sup>4</sup>

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.

### BACKGROUND

Mr. Hobdy owns rental property at 672 Anniston Drive, Lexington, Kentucky.<sup>5</sup> The rental property was vacant between October 30, 2019, and December 12, 2019.<sup>6</sup> Mr. Hobdy asserts that he was in the property performing maintenance during the first part of December and used water to wash out painting equipment and for bathroom use only.<sup>7</sup> Mr. Hobdy received two bills from Kentucky-American for this period: The bill for service between October 30, 2019, and November 15, 2019, which reflected actual usage of 748 gallons of water, and the bill for water service between November 16, 2019, and December 12, 2019, which reflected actual usage of 27,676 gallons of water.<sup>8</sup>

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<sup>4</sup> 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.

<sup>5</sup> Complaint (filed Feb 3, 2020) at 1.

<sup>6</sup> Complaint at 2.

<sup>7</sup> Complaint at 3.

<sup>8</sup> Complaint 4–7.

The Commission issued an Order on February 11, 2020, notifying Kentucky-American that it had been named as a Defendant in a formal complaint, attached a copy of the complaint, and stated that Kentucky-American was to satisfy the matters complained of or file a written answer to the Complaint within ten days from the date of the Order.

Kentucky-American filed an answer and motion to dismiss on February 21, 2020. Kentucky-American stated that it removed Meter No. H012676594 from 672 Anniston Drive, Lexington, Kentucky, on January 7, 2020, and tested it that same day at Kentucky-American's meter-testing facility at 2300 Richmond Road, Lexington, Kentucky 40502. Kentucky-American contended that the results of that meter test show that the meter is accurate.<sup>9</sup> Kentucky-American provided a copy of the meter test results indicating the same.<sup>10</sup> The Commission then had the meter in question tested by Citco Water on July 6, 2021. The meter passed all accuracy requirements.<sup>11</sup>

Mr. Hobdy alleged that because Kentucky-American could not retrieve a data log for the use of 27,676 gallons of water, the presumption should be that he did not use that amount of water.<sup>12</sup> Kentucky-American responded to this allegation by admitting that it could not retrieve a data log for the meter in question but stated that the inability to retrieve a data log has nothing to do with whether the meter itself accurately measured usage.<sup>13</sup>

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<sup>9</sup> Kentucky-American's Answer and Motion to Dismiss at 1–4.

<sup>10</sup> Kentucky-American's Answer and Motion to Dismiss at 14.

<sup>11</sup> Order (Ky. PSC Aug. 2, 2021), Appendix.

<sup>12</sup> Complaint at 3.

<sup>13</sup> Kentucky-American's Answer and Motion to Dismiss at 2.

Mr. Hobdy has maintained throughout this proceeding that there are no water leaks on the property. The Commission requested that Mr. Hobdy explain the basis for the assertion that there are no water leaks on the rental property and to include a description of all actions taken in checking for a water leak and copies of any written documents that support the assertion.<sup>14</sup> In response, Mr. Hobdy asserted that he has owned the property in question since March 12, 1986, and has performed the majority of the maintenance on the property since this time and is very familiar with the property.<sup>15</sup> He further asserted that he was present on the property daily from November 1, 2019, until December 13, 2019, and he did not observe any leaks despite being all over the property.<sup>16</sup>

#### DISCUSSION AND FINDINGS

Although there is a rebuttable presumption that water went through a meter when, as here, 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, that is not necessarily decisive of the issue raised in this complaint. In accordance with KRS 278.160, a utility must adhere to the written tariffs filed with the Commission that show all rates and conditions for service. The record shows that Mr. Hobdy notified the utility of the high water usage when Kentucky-American should have already alerted Mr. Hobdy of the high usage. This is because Kentucky-American's tariff on file with the

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<sup>14</sup> Commission Staff's Initial Request for Information to Robert D. Hobdy (filed Mar. 12, 2020) at 2.

<sup>15</sup> Complainant's Response to Commission Staff's Initial Request for Information to Robert D. Hobdy (filed Mar. 13, 2020) at 2.

<sup>16</sup> Complainant's Response to Commission Staff's Initial Request for Information to Robert D. Hobdy at 1

Commission sets forth Kentucky-American's responsibility to monitor customers' water usage.

**Kentucky-American's tariff on Meters, Testing and Accuracy  
(6.1 Meters)**

(j) Monitoring of Customer usage shall be in compliance with the then-applicable Rules and Regulations. The Company monitors Customer usage on a monthly basis through its collection of usage information. Upon the collection of that information, the Company compares usage for a particular month with a Customer's historical usage. To the extent the current month's usage show an unusual deviation from the historical usage, the Company will notify the Customer and take steps to determine the reason for the unusual usage.<sup>17</sup>

Kentucky-American should have been alerted about the high water usage by the Meter Interface Unit (MIU)/data log mid-billing cycle, and reasonable meter reading processing would have alerted Kentucky-American of the unusually high water usage when the meters were read, even if the data log was malfunctioning. According to Kentucky-American's tariff, Kentucky-American had the duty to monitor Mr. Hobdy's water usage. The Commission finds that the evidence in this case shows that Kentucky-American failed to follow the rules set forth in its tariff when it failed to monitor Mr. Hobdy's water usage, to compare it with his historical usage, and to notify him of the unusually high usage.

There is no regulatory requirement for Kentucky-American to maintain a data log specifically because the regulations predate the technology. Kentucky-American had an opportunity to flag the abnormally high usage when it received the first electronic meter reading and had a second opportunity to flag it on Kentucky-American's re-read of the

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<sup>17</sup> Kentucky-American Water Company, Current Tariff, PSC KY No. 9, First Sheet No. 13.

meter in question. The fact that the meter tested as accurate supports the evidence that Kentucky-American had notice of unusually high usage and did not notify Mr. Hobdy. Additionally, Kentucky-American should have had notice that the MIU was malfunctioning when it received a high reading. On the first read and then the re-read, Kentucky-American should have noted that the data log was malfunctioning and should have taken steps to determine the reason for the unusually high water use. Nothing was done in this case until the customer, Mr. Hobdy, notified Kentucky-American of his high water bill.

Kentucky-American should have maintained the data log in proper working order and because Kentucky-American did not maintain the data log for the meter in question, Mr. Hobdy cannot present evidence to prove his case. Also, ratepayers such as Mr. Hobdy have a reasonable expectation that the smart meters that they pay for through rates will work as Kentucky-American claims they will work.

Kentucky-American has admitted that the data log was not functioning properly in this case. The data log should have alerted Kentucky-American to the abnormally high usage in the middle of the reading cycle. The Commission finds that Kentucky-American should have maintained the data log in proper working order. The Commission finds that Kentucky-American's actions in relation to this customer complaint are not fair, just or reasonable and Mr. Hobdy should not be responsible for the high water bill.

The facts support a finding in this case that Kentucky-American is large enough and has sufficient resources to provide a higher level of customer service. When Mr. Hobdy could not get an adequate response from Kentucky-American over the phone he physically went to Kentucky-American's offices to try to speak with someone about his

high water bill.<sup>18</sup> The Commission admonishes Kentucky-American for not working with Mr. Hobdy to resolve this issue.

Kentucky-American did not perform its duty under its tariff. The Commission finds that it is appropriate to grant Mr. Hobdy's request that Kentucky-American calculate an average of his water usage and charge him accordingly.

IT IS HEREBY ORDERED that:

1. Kentucky-American shall calculate an average of Mr. Hobdy's water usage during the period in question and charge him accordingly.
2. This case is hereby closed and removed from the Commission's docket.

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<sup>18</sup> Complaint at 3.

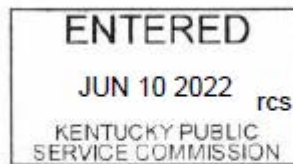


PUBLIC SERVICE COMMISSION

  
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ATTEST:

  
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