

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ALISON PATRICIA VAN SANT)	
)	
COMPLAINANT)	
)	
V.)	CASE NO.
)	2023-00399
)	
NORTHERN KENTUCKY WATER DISTRICT)	
)	
DEFENDANT)	

ORDER

On November 28, 2023, Alison Patricia Van Sant filed a complaint against Northern Kentucky Water District (Northern Kentucky District) alleging overcharging for water service due to a faulty meter. On January 12, 2024, the Commission ordered Northern Kentucky District to satisfy or answer the complaint, and Northern Kentucky District filed an answer and motion to dismiss on January 23, 2024. Neither party requested a hearing.

LEGAL STANDARD

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:

Under 807 KAR 5:006, Section 11(2)(a), a customer is allowed 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” Pursuant to 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)–(b).

If a meter is tested by a utility 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 water went through the meter.¹

BACKGROUND

According to the complaint, Ms. Van Sant and her husband begin residing at the address where they take service from Northern Kentucky District in October 2022.² They had a new water heater installed in November 2022 with no resulting change in water usage.³ According to usage data provided t by Northern Kentucky District, the Van Sants’ usage increased from less than 100 hundred cubic feet (HCF) per week to 1,300 to 1,800 HCF per day starting on January 4, 2023.⁴ On March 21, 2023 a Northern Kentucky District technician visited the service address as a result of the increase in usage.⁵ The

¹ 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.

² Complaint at unnumbered page 4.

³ Complaint at unnumbered page 4.

⁴ Northern Kentucky District’s Answer and Motion to Dismiss (Answer), Exhibit A (Meter Reading Profile) at 18–19.

⁵ Complaint at unnumbered 4; Answer at unnumbered page 7.

technician manually read the meter, which was spinning quickly, and replaced the meter.⁶ The new meter also was spinning quickly—the technician indicated to Ms. Van Sant that a leak was likely.⁷ Ms. Vant Sant hired a plumber on the same day and no leaks were found.⁸

On March 27, 2023, Northern Kentucky District performed a meter test on the replaced meter and the average meter error was less than 2 percent.⁹ Ms. Van Sant then requested that the Commission test the meter. The Commission sent the meter to an outside contractor for testing, and the average meter error was found to be less than 2 percent.¹⁰

Ms. Van Sant called Northern Kentucky Water on April 13, 2023, and mentioned to the service representative that when the plumber checked for leaks on March 21, 2023, he “pulled a lever” and said, “there was water running not leaking, but water running through, [sic] through an additional pipe that was absolutely not necessary in the house and he just shut off the supply from, to that site.”¹¹

⁶ Answer at unnumbered page 7.

⁷ Answer at unnumbered page 7.

⁸ Complaint at unnumbered page 7 (Cincinnati Plumbing Solutions invoice).

⁹ Complaint at unnumbered page 42 (Northern Kentucky District Test Results). The results indicated 97.9 percent accuracy at minimum flow rate of one-fourth gallon per minute (GPM), 100.2 percent accuracy at intermediate flow rate of 2 GPM, and 100.4 percent accuracy at maximum flow rate of 15 GPM.

¹⁰ Complaint at unnumbered pages 40–41 (Louisville Water Company Test Results). The results indicated 97.2 percent accuracy at minimum flow rate of one-fourth gallon per minute (GPM), 100.5 percent accuracy at intermediate flow rate of 2 GPM, and 99.5 percent accuracy at maximum flow rate of 15 GPM.

¹¹ Answer, Exhibit G (April 13, 2023 Phone Call Recording) at 2:13.

On May 20, 2023, Ms. Van Sant hired a second plumber to check for leaks; the plumber found no evidence of leaks and opined that a leak of the size indicated by the usage data would be observable in the Van Sants' yard.¹²

DISCUSSION AND FINDINGS

Having reviewed Ms. Van Sant's complaint and all evidence provided, the Commission finds that the complaint should be dismissed. Under 807 KAR 5:006, Section 11(2)(a), a bill adjustment is allowed "[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" Although the meter test results showed that the average meter error for the second meter was slightly inaccurate, average meter errors of 0.9 percent (Northern Kentucky District Test) or 1.27 percent (Louisville Water Company Test) do not meet the two percent threshold required by 807 KAR 5:006, Section 11(2)(a), for a billing adjustment.

Nor did Ms. Van Sant establish that she had "been incorrectly billed for another reason." Ms. Van Sant, as Complainant, bears the burden of proof.¹³ Northern Kentucky District is not required to determine the origin of the leak or other water loss on the customer's side of the meter. The evidence indicates that water was unnecessarily running through an unknown pipe and that the plumber shut it off on March 21, 2023.

The usage data provided to Ms. Van Sant by Northern Kentucky District was misleading because it did not indicate that when the meter was replaced readings were

¹² Complaint at unnumbered page 8 (Joe Lay & Sons Plumbing Company LLC letter).

¹³ Case No. 2019-00016, *Bollinger v. Kentucky-American Water Co.* (Ky. PSC Dec. 23, 2020), Order at 2.

subsequently reported in cubic feet (CF) instead of HCF.¹⁴ This made the readings after the meter replacement appear to remain high although the usage had returned to normal levels after the plumber shut the valve. Also, because customers are only billed every three months, Ms. Van Sant may not have realized that the excess usage had stopped until receiving her June bill, potentially resulting in her hiring a second plumber and believing the usage problem was unresolved. The Commission urges Northern Kentucky District to include correct measurement units when providing usage data to customers to prevent any such misunderstandings.

Northern Kentucky Water has indicated that Ms. Van Sant may be eligible for a leak adjustment up to \$1,500 pursuant to its tariff.¹⁵ That issue, however, is not presently before the Commission.

IT IS THEREFORE ORDERED that:

1. Ms. Van Sant's complaint is dismissed.
2. A copy of this Order shall be served upon Ms. Van Sant by U.S. certified mail, return receipt requested at 3488 Meadowlark Drive, Edgewood, Kentucky 41018.
3. This matter is dismissed with prejudice and removed from the docket.

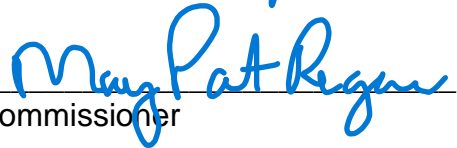
¹⁴ Answer at unnumbered page 11.

¹⁵ Answer at unnumbered page 10.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
FEB 22 2024 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

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