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**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

MAY 06 2019

**PUBLIC SERVICE
COMMISSION**

In the Matter of:

**BENT TREE CONDOMINIUM ASSOCIATION)
COMPLAINANT)**

V.)

CASE NO. 2019-00133

**KENTUCKY-AMERICAN WATER COMPANY)
DEFENDANT)**

**FORMAL COMPLAINT BY BENT TREE CONDOMINIUM ASSOCIATION
AGAINST KENTUCKY-AMERICAN WATER COMPANY**

Bent Tree Condominium Association ("Bent Tree" or "Complainant"), pursuant to KRS 278.260, KRS 278.270, KRS, 278.040, KRS 278.030 and 807 KAR 5:001, Section 20, for its formal complaint against Kentucky-American Water Company ("Kentucky-American" or "Defendant") hereby states as follows:

PARTIES

1. The Complainant is Bent Tree Condominium Association, 401 Redding Road, #42, Lexington, Kentucky, 40517. Bent Tree is a non-profit organization consisting of residential, condominium dwellings (or "members") collectively formed to maintain property values of its individual structures via covenants and restrictions. Bent Tree's members receive their water service from Kentucky-American Water Company.

2. The Defendant is Kentucky-American Water Company, 2300 Richmond Road, Lexington, Kentucky 40502. Kentucky-American is a utility engaged in the water business and provides water service to Bent Tree.
3. The facts supporting this Formal Complaint are set out more fully below, but succinctly stated, this matter concerns overbilling for water services to the Complainant's members by the Defendant; and, thus, the Defendant has engaged in unfair, unjust and unreasonable business practices in violation of Kentucky law.

APPLICABLE LAW

4. The Kentucky Public Service Commission ("Commission") has exclusive jurisdiction over the rates, terms and conditions of regulated utilities. KRS 278.040.
5. The rates for water services charged by the Defendant to the Complainant's members are rates as contemplated by KRS 278.040.
6. Kentucky law provides that utilities may only charge rates that are fair just and reasonable. KRS 278.030(1).
7. To ensure just and reasonable rates, the Commission has established charges for residential customers *In the Matter of Electronic Investigation of the Impact of the Tax Cuts and Jobs Act on the Rates of Kentucky-American Water Company*, Case No. 2018-00042, Order dated August 30, 2018; which reduced rates from Kentucky-American's previously filed application for an adjustment of rates, *In the Matter of Electronic Application of Kentucky-American Water Company for an Adjustment of Rates*, Case No. 2015-00418, Order dated August 23, 2016.

8. KRS 278.260 vests the Commission with original jurisdiction over any complaint as to reasonableness of the rates or service of any utility and empowers the commission to investigate and remedy complaints.
9. Moreover, KRS 278.270 provides that once the Commission receives a complaint pursuant to KRS 278.260, and after reasonable notice and a hearing, if it “finds that any rate is unjust [or] unreasonable ... the Commission shall prescribe a rate to be followed in the future.”

STATEMENT OF FACTS

10. The Defendant is only entitled to charge rates as authorized by the Commission. The Defendant’s most recently approved application for an adjustment in rates, *In the Matter of Electronic Application of Kentucky-American Water Company for an Adjustment of Rates*, Case No. 2015-00418, became effective August 28, 2016 by Order dated August 23, 2016 and remained in effect until September 1, 2018 by way of Commission Order dated August 30, 2018 in *In the Matter of Electronic Investigation of the Impact of the Tax Cuts and Jobs Act on the Rates of Kentucky-American Water Company*, Case No. 2018-00042, at which time the rates were reduced.
11. The Complainant’s members are residential customers who receive water services from the Defendant and should only be billed at the rates as approved by the Commission and for the amounts used.
12. Complainants members are billed by Bent Tree as part of their respective homeowner’s association fees.

13. Bent Tree has two water meters. The first meter supplies 28 condominiums and is located in a meter vault on Kirklevington Road. The second meter is located in a meter vault on Redding Road and supplies 16 condominiums.
14. In July of 2017 the consumption and billings for the Kirklevington meter account nearly doubled and continued at unusual high rates through May of 2018 and, then, returned to historical levels. This assertion is based on actual monthly billings and a Kentucky-American hourly flow report.
15. In October 2017, Mr. Brack Marquette, president of Bent Tree, began contacting Defendant in an attempt to seek resolution of the unusually high consumption billed to Brent Tree. However, all attempts by Bent Tree to understand and address the high billings via communication with Kentucky American Water Company have resulted in both long delays in gaining responses from Defendant as well as very little useable information to resolve the billing dispute.
16. More specifically, Mr. Marquette requested in November 2017 that Kentucky-American test its meters at Kirklevington which the Defendant reported it had accomplished. Then, on or about February 6, 2018, the Defendant on its own initiative installed two new meters and began taking hourly readings.
17. By letter from the Defendant dated February 27, 2018, Complainant was informed that the meters were reading accurately.
18. On March 5, 2018, Mr. Marquette appealed to the Defendant for further explanation of the billing dispute by way of an email wherein he inquired 1) whether Complainant had a leak problem on its side of the meter and if so 2)

how many gallons per hour were flowing through either a 2" pipe or a ¾" pipe.

Additional questions were posited to Defendant on an attached copy of a meter flow report from 2/27/2018.

19. At an on-site meeting between Mr. Marquette and Defendant officials on March 9, 2018, the Defendant informed Mr. Marquette that a purported leak was **at the Redding Road location** and not the Kirklevington location.
20. On or about March 9, 2018, the Defendant performed listening tests at the dwellings associated with the Redding Road meter; determined that a purported leak existed; and characterized it as intermittent.
21. On or about May 25, 2018, the Complainant engaged the services of American Leak Detection to replicate the Defendant's conclusion of a purported leak at the Redding Road meter's dwellings. American Leak Detection could not replicate the Defendant's conclusions.
22. In light of American Leak Detection's results, on May 25 Mr. Marquette emailed Defendant requesting again verification of which meter had the associated "leak" and to answer questions he had raised in his March 5, 2018 email.
23. After additional appeals for assistance to the Defendant, Defendant informed Mr. Marquette on June 21, 2018 that the matter had been referred to Defendants Customer Advocacy personnel.
24. On or about July 16, 2018, Mr. Marquette again appealed to Defendant for assistance with his dispute. Defendant's Customer Advocacy personnel advised

Mr. Marquette to email them the details of the dispute and provide his questions originally requested on March 5, 2018.

25. On or about July 25, 2018, Defendant verified that the alleged, suspected leak was associated with the **Kirklevington address** and not the Redding Road address.

Defendant also provided consumption data for both meters.

26. Throughout this dispute, and to the best of Bent Tree's information, knowledge and belief, there have been **at least three** meters at the Kirklevington meter vault since July 2017 - the original meter, a temporary meter (used during the testing of the original meter), and another meter used to measure hourly flows.

27. Throughout this dispute, Bent Tree has remained current on its Redding Road meter account and has made substantial, partial payment for the Kirklevington meter account.

28. The Defendant's insistence that Bent Tree owes for this questionable and temporary sharp rise in consumption lacks adequate proof that the problem lies on the Bent Tree side of the meter.

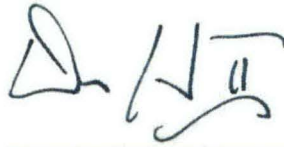
29. In pursuit of causes for the exceptional billings, Bent Tree has encountered extraordinary long delays in Defendant's responses, misdirection from Kentucky-American to pursue leak detection investigations on the wrong ("Redding Road") meter, and numerous other instances of delay and lack of forthcoming information in response to Bent Tree's requests for information to resolve the dispute.

30. Defendant has engaged in unfair, unjust and unreasonable business practices in violation of Kentucky law by overbilling Complainant for consumption of water services to the Kirklevington account.
31. The attorney for Bent Tree authorized to represent it in this proceeding and to take service of all documents is:

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WHEREFORE, Bent Tree respectfully requests that the Commission make a determination that a prima facie case been established that Kentucky-American Water Company has engaged in unfair, unjust and unreasonable business practices in violation of Kentucky law by overbilling Complainant for consumption of water services to the Kirklevington account and that Kentucky-American be required to answer this Formal Complaint. In the alternative, Bent Tree requests the Commission make a determination that a prima facie case has been established; test all of the meters associated with the Complainant's accounts since July 2017; and require Kentucky-American to provide definitive resolution to the metering issues, and more specifically accurate consumption and billing demands for each metered account.

Respectfully submitted,



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**COUNSEL FOR BENT TREE
CONDOMINIUM ASSOCIATION**

CERTIFICATE OF SERVICE

I certify that this FORMAL COMPLAINT is a true and accurate copy of the document being filed with the Commission in paper medium; that the individuals below were mailed a true and accurate copy of same; and that an original and ten copies of the filing in paper medium are being hand delivered to the Commission all on this 6th day of May 2019.



Dennis G. Howard, II

Ms. Elaine Chambers
Director, Rates and Regulatory
Kentucky-American Water Company
2300 Richmond Road
Lexington, Kentucky 40502

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COUNSEL FOR KENTUCKY-AMERICAN WATER COMPANY