



meter to be tested, and a timeline of communication between he and Kentucky-American.<sup>2</sup> On October 10, 2023, the Commission entered an Order noting that Mr. Jouett's meter had tested accurately and giving Mr. Jouett an additional 20 days from the date of service of the October 10, 2023 Order to submit additional evidence in support of his complaint.

### LEGAL STANDARD

The Commission's regulations provide that all water sold by a utility shall be upon the basis of metered volume sales.<sup>3</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 tariffed rates and bars equitable defenses against a utility billing its filed rates for services provided.<sup>4</sup> The Commission has consistently applied this requirement in holding that customers are responsible for paying for all water that passes through a meter that is reading accurately.<sup>5</sup>

Under 807 KAR 5:006, Section 11(2)(a), a bill adjustment is required "[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." Section 15(4) of 807 KAR 5:066 states that for the purposes of a billing adjustment the average error

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<sup>2</sup> Richard H. Jouett's Response to Commission Order (filed May 8, 2023).

<sup>3</sup> 807 KAR 5:066, Section 13(1).

<sup>4</sup> See *Boone County Sand and Gravel v. Owen County Rural Electric Coop. Corp.*, 779 S.W.2d 224, 226 (Ky. App. 1989).

<sup>5</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).

should be determined by testing the meter at 75, 50, and 25 percent of its maximum rated capacity and taking the algebraic average of those results.

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>6</sup>

If a complaint fails to establish a *prima facie* case or conform to the administrative regulation, 807 KAR 5:001, Section 20(4)(a)(1) provides that the complainant be notified and provided an opportunity to amend the complaint within a specified time. Additionally, 807 KAR 5:001, Section 20(4)(a)(2) provides that if the complaint is not amended within the time that the Commission grants, then the complaint shall be dismissed.

### DISCUSSION AND FINDINGS

The Commission tested the meter in question in accordance with 807 KAR 5:066, Section 15(2)(a). The meter test was repeated two times for each of: the minimum flow rate of ¼ gallon per minute (gpm), the intermediate flow rate of 2 gpm, and the high flow rate of 15 gpm as prescribed in 807 KAR 5:066, Section 15(3). At each flow test, the resulting two accuracies were then averaged for a representative accuracy result and compared with the accuracy requirements prescribed by 807 KAR 5:066, Section 15(2)(a). The accuracy results of this meter test were 102 percent at the minimum flow rate of 1/4 gpm, 100 percent at the intermediate flow rate of 2 gpm, and 98.75 percent at the maximum flow rate of 15 gpm. Notably, these results are consistent with the meter

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<sup>6</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).

test performed by Kentucky-American, which found the meters accuracy to be 101, 100, and 99.6 percent at minimum, intermediate, and maximum flow rates.<sup>7</sup>

The accuracy results of the Commission's test indicate that the meter failed the minimum flow test, as the required accuracy at minimum flow was between 95 percent and 101 percent of actual flow, and, as noted above, the test conducted on behalf of the Commission reflected 102 percent at the minimum flow rate. As required by 807 KAR 5:066, Section 15(4), three additional tests of the meter were conducted to determine the meter error for bill adjustment purposes. The additional tests resulted in an average meter error of negative 0.65 percent—meaning, on average, the meter was likely undercharging Mr. Jouett by 0.65 percent. Pursuant to 807 KAR 5:006, Section 11(2)(a), the average meter error of 0.65 does not require any billing adjustment by the utility.

As noted in the October 10, 2023 Order, the Commission found that the circumstantial evidence provided by Mr. Jouett was not sufficient to rebut the presumption that the amount of water reported through the meter was correct based on the test performed by the Commission.<sup>8</sup> The Commission issued an Order on October 10, 2023, stating that because Mr. Jouett is alleging that Kentucky-American overcharged him for water service and because the evidence in the record indicates that Mr. Jouett's meter has tested accurately, that Mr. Jouett should be given an additional 20 days from the date of service of the October 10, 2023 Order to submit additional evidence in support of his complaint.

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<sup>7</sup> Order (Ky. PSC Oct. 10, 2023), Appendix (including the results of both the Commission's meter test and Kentucky-American's meter test).

<sup>8</sup> Order (Ky. PSC Oct. 10, 2023) at 4-6.

Mr. Jouett did not file a response to the October 10, 2023 Order and has not provided any additional evidence to support his complaint. The complainant bears the burden of proof in matters before an administrative body.<sup>9</sup> Here, Mr. Jouett has not met that burden of proof by presenting evidence to rebut the presumption that the meter was reading accurately. In the absence of a defective meter, a customer is responsible for the quantity of water supplied.<sup>10</sup> Thus, having reviewed the record and being otherwise sufficiently advised, the Commission finds that Mr. Jouett's formal complaint should be dismissed.

IT IS HEREBY ORDERED that:

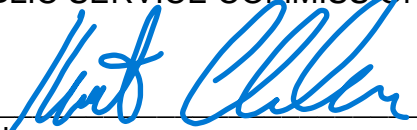
1. Mr. Jouett's formal complaint is dismissed and is removed from the Commission's docket.
2. A copy of this Order shall be served on the Complainant, Richard Jouett, by U.S. certified mail, return receipt requested at 2379 Harrods Pointe Trace, Lexington, Kentucky 40514.

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<sup>9</sup> *Energy Regulatory Comm'n v. Kentucky Power Co.*, 605 S.W.2d 46, 50 (Ky. App. 1980).

<sup>10</sup> *Louisville Tobacco Warehouse Co. v. Louisville Water Co.*, 172 S.W. 928, 931 (Ky. 1915). See also Case No. 2006-00212, *Robert Young Family vs. Southeastern Water Association* (Ky. PSC Jan. 25, 2007); Case No. 1999-00109, *Susan Elizabeth Spangler and Mark Lewis Farman vs. Kentucky-American Water Company* (Ky. PSC Oct. 7, 1999).

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
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KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director

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