

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

RICHARD LEE HAUENSTEIN)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 2004-00310
)	
NORTH SHELBY WATER COMPANY)	
)	
DEFENDANT)	

O R D E R

On August 3, 2004, Richard Lee Hauenstein ("Complainant") filed with the Commission a formal complaint against North Shelby Water Company ("North Shelby") in which he alleges that North Shelby failed to follow its published procedures regarding the monitoring of customer consumption and as a result he experienced high water usage due to an undetected water leak. Complainant requests that a refund be applied to his bill. North Shelby denies any wrongdoing or liability.

BACKGROUND

Beginning in April 2001, Complainant's water bill appeared to be excessively high. In May 2001, Complainant requested that North Shelby test his meter. North Shelby tested his meter and found it to be functioning properly.

In April or May 2002, Complainant, still believing that his bill was excessively high, requested that his meter be inspected again. There is a dispute as to whether North Shelby conducted this second test. North Shelby claims that it conducted the test

and that it informed Complainant that the test indicated that he had a leak in his system. To support its claim, North Shelby submitted copies of its records of these phone calls.¹ Complainant alleges that he never received a notification.

In February 2004, Complainant, upon learning that his neighbor's water bills were significantly less than his own, hired a plumber who discovered and repaired a leak on an outdoor hydrant on Complainant's side of the meter. Complainant's next water bill was approximately half of the amount of his previous monthly water bill.

Complainant argues that, if North Shelby had followed its tariff for monitoring customer usage by continuing to inform him that his leak had not been repaired, Complainant would not have incurred such high bills for over 2 years. Complainant's requested relief is as follows:

[A] reimbursement to be calculated, in cash or credit to complainant's water bill, equal to the difference between the actual amounts billed to the complainant in the disputed period, and, a reasonable average monthly charge as determined by PSC.²

DISCUSSION

The Commission Cannot Grant the Requested Relief.

Leaks on the customer's side of the meter are the customer's responsibility.³ Neither party disputes the location of Complainant's leak nor a dispute that the water billed to Complainant flowed through his meter. There is also no dispute that the meter

¹ This record was a "phone-o-gram" memo pad, dated April 10, 2002, indicating that the test revealed the meter was turning slowly and that an employee from North Shelby had spoken to Complainant.

² Complaint at 2.

³ 807 KAR 5:066, Section 12(2). See also Tariff of North Shelby Water Company, P.S.C. Ky. No. 2 Original Sheet 10(B).

was functioning properly. Since there is no dispute that the water flowed through Complainant's meter, Complainant's request that the Commission calculate a refund based on historical water consumption is tantamount to a request for damages.

Complainant requests relief that is not within the Commission's power to grant. The Commission does not have the authority to award damages. In Carr v. Cincinnati Bell, Inc., 651 S.W.2d 126 (Ky. App. 1983), a customer brought an action in Kenton Circuit Court seeking, among other things, compensatory damages for tortious breach of contract for telephone service. Holding that the Commission had exclusive jurisdiction over the matter, Kenton Circuit Court dismissed the suit. Reversing the circuit court's opinion on this issue, the Court said:

[A]ppellant seeks damages for breach of contract. Nowhere in Chapter 278 do we find a delegation of power to the PSC to adjudicate contract claims for unliquidated damages. Nor would it be reasonable to infer that the Commission is so empowered or equipped to handle such claims consistent with constitutional requirement. Kentucky Constitution Sec. 14.

Id. at 128.

The Commission, therefore, only has the authority over the portion of the complaint relating to Complainant's claim that North Shelby did not follow applicable regulations and tariff provisions regarding monitoring of customer usage.⁴

⁴ According to KRS 278.160, a utility must charge its tariffed rates to all of its customers. Kentucky courts have found that, even where a utility has committed mistakes leading to higher charges for a customer, the utility must collect its tariffed rates and charges. Boone County Sand and Gravel v. Owen County Rural Electric Cooperative Corporation, 779 S.W.2d 224 (Ky. App. 1989). Assuming *arguendo*, that North Shelby failed to follow its tariff procedures for monitoring customer usage, the Commission could not grant the requested relief.

Alleged Violations of North Shelby's Tariff

The only remaining issue relates to North Shelby's conduct under its tariff. North Shelby's tariff contains two provisions regarding monitoring of customer usage and North Shelby's obligations under these provisions. The first tariff provision requires North Shelby to monitor a customer's annual usage and to notify the customer if the annual usage varies more than 100 percent.⁵ The second provision requires North Shelby to monitor a customer's usage monthly and test the customer's meter if there is

⁵ The tariff provision states:

At least once annually the Company will monitor the usage of each customer according to the following procedure:

1. The customer's annual usage for the most recent 12 month period will be compared with the annual usage for the 12 months immediately preceding the period.
2. If the annual usage for the two periods are substantially the same or if any difference is known to be attributed to unique circumstances, such as unusual weather conditions, common to all customers, no further review will be done.
3. If the annual usage varies by more than 100% or more and cannot be attributed to a readily identifiable common cause, the Company will compare the customer's monthly usage records for the 12-month period with the monthly usage for the same months of the preceding year.
4. If the cause or the usage deviation cannot be determined from analysis of the customer's meter reading and billing records, the company will contact the customer by telephone or in writing to determine whether there have been changes such as different number of household members or work staff, additional or different appliances, changes in business volume, or known leaks in the customer's service line.
5. Where the deviation is not otherwise explained, the Company will test the customer's meter to determine whether it shows an average error greater than 2% fast or slow.
6. The Company will notify the customers of the investigation, its findings, and any refunds or back-billing in accordance with 807 KAR 5:006, Sections 10(4) and (5).

In addition to the annual monitoring, the Company will immediately investigate usage deviations brought to its attention as a result of its on-going meter reading or billing processes or customer inquiry.

Tariff of North Shelby Water Company, P.S.C. Ky. No.2 Original Sheet 18.

an “unusual usage variance” between months.⁶ If the “unusual variance” can be attributed to known factors, North Shelby is not required to test the customer’s meter.

It appears from the evidence in the record, especially Complainant’s billing records, that, for the period in question, Complainant’s annual usage did not vary more than 100 percent between years. Accordingly, North Shelby was not required, under its tariff, to contact the Complainant regarding his consumption or to conduct any investigation.

Complainant’s usage increased from 3,300 gallons in May 2002 to 21,500 gallons in June 2002—an unusual variance in consumption. North Shelby, however, did not test Complainant’s meter. North Shelby claims that it did not notify Complainant of this spike in his use, or conduct its own investigation, because it believes the meter reader must have reported that he noticed Complainant was filling a swimming pool. Complainant admits that he was filling his pool, but denies that the meter reader would have been able to see the pool from where the water meter was located. North Shelby argues that even if the meter reader had not been able to view the swimming pool, it could have learned of the pool from other sources.

There is no evidence to suggest that North Shelby knew that the unusual variation in the May 2002 billing cycle was due to Complainant’s filling of his pool. If North Shelby did know about the filling of the swimming pool at the time of the billing, it

⁶ The tariff provision states:

The Company shall continue computer monitoring of the Member’s meter readings for unusual variances, which monitoring process shall include a printout, prior to actual billing, of any such unusual variances. If the Member’s usage is unduly high and the deviation is not otherwise explained, the Company shall test the meter in accordance with 807 KAR 5:006, Section 9.

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would not have been required under its tariff to test the meter or conduct its own investigation. If North Shelby did not know that Complainant was filling his pool at the time of billing, then, arguably, North Shelby should have tested Complainant's meter pursuant to its tariff. However, even if North Shelby had tested the meter after noting the unusual variance, it is under no obligation pursuant to its tariff to inform Complainant of the test results. Ultimately, the responsibility for the customer's service line rests solely upon the customer.

The Commission finds that the evidence of record does not support a conclusion that North Shelby violated its tariff regarding monitoring of customer usage. The Commission suggests, however, that to avoid such confusion in the future, North Shelby should maintain better records regarding unusual variances in a customer's usage, the reasons for those variances, and what actions, if any, are taken in response to the unusual variations.

CONCLUSION

As discussed herein, the Commission, lacking the jurisdiction to do so, cannot order the requested relief. Furthermore, the record does not support a finding that North Shelby violated its tariff. There being no other matters before the Commission, this case should be dismissed.

IT IS THEREFORE ORDERED that:

1. This case is dismissed with prejudice and is removed from the Commission's docket.
2. This is a final and appealable Order.

Done at Frankfort, Kentucky, this 28th day of October, 2005.

By the Commission

ATTEST:

A large, complex handwritten signature in black ink, consisting of multiple overlapping loops and flourishes, positioned over the 'ATTEST:' text.

Executive Director