

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

TROY SEALE)
)
COMPLAINANT)
)
v.) CASE NO. 2005-00011
)
JESSAMINE-SOUTH ELKHORN)
WATER DISTRICT)
)
DEFENDANT)

RECEIVED
JAN 31 2005
PUBLIC SERVICE
COMMISSION

ANSWER

In accordance with the Commission's Order, the Defendant, Jessamine South Elkhorn Water District (hereinafter "District", by counsel, hereby tenders the following Answer:

Not only is the Complaint filed by Troy Seale grossly inaccurate as to what he terms as the "relevant facts", his characterization of the District's actions as "very heavy handed and oppressive" is completely without basis. The District will by this response, as supported by the attached exhibits, give the Commission and its staff a more objective and accurate version of the events which took place.

FACTS

First, the timeline for this dispute starts in the Summer of 2003, not 2004 as Seale alleges. It began with a request on July 29, 2003 from Seale, that the water main be flagged on his farm in the area where he was planning to repair the fence. The District's flagging is done by its maintenance contractor, Stephenson Construction Company, and

Stephenson's billing to the District reflects the date the flagging was done. **See Exhibit 1.** Stephenson was also called to Seale's farm to repair the water main when it was broken by the fencing contractor hired by Seale to repair his fence. This break occurred on August 13, 2003, again as evidenced by **Exhibit 1**, wherein it reflects a charge to the District for repairing the break on August 13, 2003 and the cleanup after the break on August 18, 2003. The District initially invoiced the fencing contractor, Earlywine Fencing, for the costs of repairing the break, the water loss (**see Exhibit 2**) and the cost of testing the main for contamination after it was placed into service. **See Group Exhibit 3** for the invoice which was mailed September 10, 2003 along with the supporting invoice from the testing lab¹. Earlywine Fencing responded by calling the District office and advising that Seale should have been sent the bill. Shortly thereafter, the District's office manager was also advised by the Kentucky Public Service Commission staff to send the invoice to Seale. The office manager did this. **See Exhibit 4.** Seale refused to pay the invoice, and he called the District's office with an explanation of why he should not be responsible for the charges. At the District's regular monthly meeting on December 3, 2003, it was brought to the Board of Commissioners' attention that Seale refused to pay the bill for the reasons that (1) he was out of town when it happened; and (2) he did not break the line, but the fence contractor that he hired to do the job did. The Board determined that Seale should be responsible for the bill. **See Exhibit 5.** On December 8, 2003, the District's office manager, following the Board's instructions, wrote Seale advising him of the Board's decision and inviting him to the January, 2004 meeting to

¹ Dontro Farm is the name of Mr. Seale's horse farm.

discuss the matter. **See Exhibit 6.** Again no payment or contact from Seale was forthcoming. The matter was again discussed by the Board at its February 4, 2004 meeting. **See Exhibit 7.** The office manager was again directed to write Seale, this time requesting his presence at the March, 2004 meeting to discuss the matter. **See Exhibit 8.** It was anticipated that Seale would come to the next regularly scheduled meeting of the District on March 3, 2004. As the minutes of this meeting reflect, Seale did not attend nor did he advise in advance that he would not attend. **See Exhibit 9.** The District's counsel was directed by the Board at the March meeting to write Seale demanding payment under threat of termination of service. **See Exhibit 10.** Sometime after the letter was mailed on April 14, 2004, Seale's lawyer called requesting that termination of service not occur until he and Seale could come to a meeting. It was agreed that they would appear at the May 5, 2004 meeting and that service would continue until that meeting. On May 5, 2004, Seale's counsel appeared, but Seale did not. The minutes of this meeting reflect that there was a discussion with Seale's counsel about Seale contacting his fencing contractor and that the matter would be discussed between the parties at the regular July, 2004 meeting. **See Exhibit 11.** Water service was to be continued in the meantime. On July 17, 2004, counsel for Seale came late to the meeting, again without his client, and as a result of the Board's counsel having to leave the meeting before it was concluded, no discussion was held. Another meeting was tentatively scheduled for the regular August meeting. **See Exhibit 12.** The Board, nor the District office received any contact from Seale through the months of August and September, 2004, but service to Seale continued without interruption. At the October, 2004 meeting, Board counsel was directed to

contact Seale about a resolution of the bill that was owed. **See Exhibit 13.** On November 11, 2004, Board counsel wrote Seale's counsel proposing the December, 2004 meeting as a time to meet. **See Exhibit 14.** On December 1, 2004, the Board met; however, Seale and his counsel arrived after the meeting began and after the Board had already begun discussing another on its agenda. When the Board was ready to discuss the Seale matter at or around 1:45 PM (the meeting started at 1:00 PM), it was discovered that Mr. Seale and his counsel had left the reception area and would not be returning. The minutes of the meeting (**see Exhibit 15**) reflect the Board's decision to send Seale an additional invoice for an amount incurred by it for clean up of the work site, which had not previously been forwarded to him, along with a letter advising him that service would be discontinued in January, 2005. This letter was mailed by the office manager on December 2, 2004 along with the original invoice, the additional invoice and the District's tariff section addressing damage to the water mains. **See Group Exhibit 16.** Seale's counsel responded to the December 2, 2004 correspondence with a letter dated December 9, 2004 (**see Exhibit 17**) and thereafter filed a Complaint with the Kentucky Public Service Commission.

ISSUES

1. Were the District's actions toward Seale "very heavy handed and oppressive"?
2. Did the District prevent Seale from repairing his fence until the District flagged the waterline?
3. Did the District timely flag the line after it was requested to do so?
4. Was the waterline accurately flagged by the District?

5. Is Seale responsible to the District under Rules and Regulations No. 23 for its loss, cost and expenses, including attorney's fees, for the actions of Seale's fencing contractor in damaging the waterline?

ARGUMENT

1. The District treated Seale fairly and reasonably.

The Commission may judge for itself from the exhibits whether or not Seale was treated in a "very heavy handed and oppressive fashion". The District would submit that it did not and that the history of the events leading to the Complaint support this assertion. It should be noted that the District gave Seale every opportunity to appear and resolve the dispute. It was Seale who declined to appear personally before the Board for a period exceeding one year. When he finally came to a meeting, he became impatient and left before he had the opportunity to discuss the matter with the Board.

2. The District did not prevent Seale from having the fence repaired before it could be flagged.

As the District's tariff reflects in Rule No. 23, it is left to the customer's discretion whether or not he has the water main marked before working in the area of the line. It has never been the District's practice, nor would it be practical for the District to attempt to prevent work being done near its lines before they were flagged.

3. The District timely flagged the waterline after it was requested to do so.

Seale's line was flagged the very same day he called requesting that it be done. Even if Seale's story, that there was a three-week delay between the request and the

actual marking, was accepted as true, he was not required to wait under the provisions of Rule 23.

4. The waterline was accurately flagged by the District.

The waterline was flagged such that Seale could have avoided damaging the main and the proof will be that the personnel from Stephenson Construction Company noticed that some of the flags had been moved after the fence holes had been excavated. Furthermore, Rule No. 23 absolves the District of any responsibility for marking the line inaccurately.

5. Seale is financially responsible to the District under its Rules and Regulations (No. 23) for its loss, cost and expenses, including attorney's fees, for the damage done by his contractor.

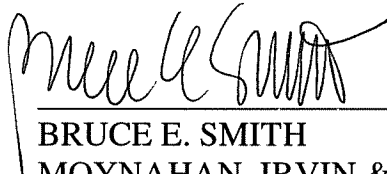
Rule No. 23, approved by the Commission on March 21, 1983, is applicable to all of the District's customers by virtue of their receipt of water service and by virtue of the Commission's approval. As written, Rule No. 23 states that "any damage or injury to persons or property caused by or resulting from the acts of the customer or any other individual in relation to the District's property shall be paid by the customer or other individual including but not limited to all loss, cost and expenses, including attorney's fees and court costs. This same Rule also provides that flagging of a water main by the District "does not relieve such person of complete responsibility and liability for any and all damages, liability and loss to the District's property resulting from any act of such person or his assigns and/or agent. The District first sent the invoice to the fencing

contractor, but was later advised by Commission staff to send it to Seale pursuant to the District's Rules and Regulations.

Seale acted by hiring a contractor to repair his fence. The contractor damaged the District's water main. The District has the option under Rule No. 23 to proceed against either its customer or the contractor and the Rule specifically provides that the customer is liable for the acts of his "assigns and/or agent". The District followed the Commission staff's directions and has pursued Seale for payment.

WHEREFORE, the District requests the following relief:

1. An order directing Seale to pay all of the District's loss, costs and expenses, including attorney's fees and costs, associated with the damage to its watermain and the ensuing dispute; and
2. All other appropriate relief to which it may appear entitled.

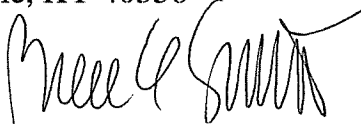


BRUCE E. SMITH
MOYNAHAN, IRVIN & SMITH, P.S.C.
110 NORTH MAIN STREET
NICHOLASVILLE, KENTUCKY 40356
(859) 887-1200
**ATTORNEY FOR JESSAMINE- SOUTH
ELKHORN WATER DISTRICT**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Answer was duly served by mailing same, postage prepaid, on this the 28th day of January, 2005, to the following:

David Russell, Marshall, Esq.
109 Court Row
Nicholasville, KY 40356



BRUCE E. SMITH

g:\...\JSEWD\Seale\Answer