

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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COMMISSION

In the Matter of:

MOORE'S CHAPEL A.M.E. CHURCH

COMPLAINANT

V.

CASE NO.  
2011-00414

WATER SERVICE CORPORATION OF  
KENTUCKY

DEFENDANT

**ANSWER OF WATER SERVICE CORPORATION OF KENTUCKY**

Water Service Corporation of Kentucky (WSCK), by counsel, for its answer to the Complaint states that it fails to state a prima facie claim for relief as required by 807 KAR 5:001(12). The Complaint merely states that the complainant received a bill for monthly water service that it believes is excessive. Based on the assertions that there could not have been sufficient usage by the customer and that there is no known leak, the complaint seeks a refund of the "excessive" portion of the bill for the month of December, 2009.

The water bill attached to the complaint shows that the monthly bill prior to the December, 2009 bill was for \$22.57. The typed memo attached to the Complaint dated February 3, 2010 says *another bill has just been received for \$23 and "whatever it was has not reoccurred."*

Based on the facts that can be gleaned from the Complaint, the water meter registered correctly and consistently with prior months until December, 2009, when it registered an excessive amount of water usage. Then, in the next billing month the

meter registered a “normal” usage consistent with prior months’ billings. As admitted in the Complaint, whatever it was has not reoccurred. For this scenario to occur, it must be assumed that the meter worked up until December, 2009, began to register at a rapid rate for one month, then returned to “normal” for all months subsequent.

On several occasions from December, 2009 until 2011, employees of the Clinton office of WSCK met with the pastor of the church or other members of the church to discuss the disputed bill. Additionally, the pastor of the church was told that a field meter test could be performed or the meter could be tested by an independent test facility. Neither offer was accepted.

WSCK asserts that if the meter register failed and allowed an excessive reading, then such a failure would continue. The meter would not and could not repair itself. In response to this issue being raised in the hearing of Case No. 2010-00476, WSCK had the complainant’s meter tested. The customer had at no time requested the company test the meter. The test showed that the meter was accurate within PSC standards. The accuracy of the meter proves that the water billed to the complainant actually passed through the meter. The test results and the testimony from that case are incorporated by reference.

Because the test confirmed that the meter could not have been the cause of the alleged excessive billing, there is no other obligation on WSCK to further investigate the cause of the excessive water usage. Any cause of the usage, if not the meter, must be on the customer’s side of the meter. A leak or usage are the only two possible causes. Neither circumstance is within the control of WSCK. Leaks on the customer’s side of the meter are the customer’s responsibility - 807 KAR 5:066, Section 12(2), which

precludes WSCK being held liable for reimbursement of the amount of the bill associated with a leak. Because the complainant disputes that there was a leak, the only other possibility is consumption of the water by the customer.

The Commission has dealt with similar situations. In Case No. 2006-00212, Order dated January 25, 2007, a customer complained that a monthly meter reading and billing were excessive. No proof of a leak or other cause was provided. The Commission stated: "...[T]he Young's, who bear the burden of proof in this case, have not provided conclusive evidence that the meter reading for the March 2006 bill was incorrect or that a leak existed on either side of the meter connection." The complaint was dismissed. On rehearing, the Commission said: "Although the March 2006 reading is unusual considering the historic monthly usage at the Young's home, the Commission cannot infer wrongdoing based only on one irregular month. There must be conclusive proof that Southeastern incorrectly read the meter in March 2006." Order dated February 26, 2007

In Case No. 99-109, Order dated October 7, 1999, the Commission dismissed a complaint involving an excessive water bill:

In this case, it has not been proven that the meter was functioning improperly, or that the meter was read incorrectly by Kentucky-American. In Tackett v. Prestonsburg Water Co., Ky., 38 S.W.2d 687, 690 (1931), Tackett refused to pay his water bill on the ground that he was charged with the use of an excessive quantity of water. The Court held that without any direct proof that the meter had been incorrectly read, the customer is responsible for payment for the amount of water that passes through the meter. Here, the Complainants' evidence *similarly falls short*. The Commission is not persuaded that Kentucky-American incorrectly read the meter on December 19, 1999. Thus, Kentucky-American properly billed the Complainants for the water that passed through their meter.

Finally, in Case No. 96-368, order dated April 3, 1997, the Commission said:

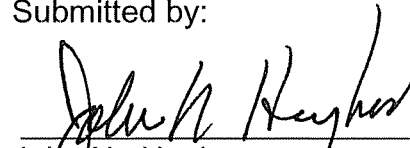
While Kentucky-American could not prove that Mr. Marcinek's increased water usage was the result of his leaky toilet or any other leak on his side of the meter, it does not bear the burden of proof. While the Commission understands Mr. Marcinek's position and recognizes that the bill in question is not consistent with his normal water usage, he failed to prove that the amount of water in question did not in fact pass through his meter. Two tests showed that the meter was accurately recording the amount of water which flowed through it.

Because there can be no dispute that the water flowed through complainant's meter, the burden to prove the cause of the excessive billing has not been met. For this reason, the complaint must be dismissed.

Additionally, the relief sought by complainant - that the Commission refund a portion of the bill based on historical water consumption - is tantamount to a request for damages. The Commission has no authority to award damages. See Case No. 2004-00310, order dated October 28, 2005.

Based on the lack of facts contained in the Complaint that would allow the Commission to make a finding that WSCK has violated a provision of its tariffs or a regulation of the Commission, and the lack of any allegation that if proved would result in a violation or either, the Complaint must be dismissed. There are no facts or circumstances that have been alleged that could be supplemented, verified or otherwise proven to support the allegations in the Complaint. Consequently, any further discovery, conferences or hearings would be of no benefit or consequence to the outcome of this proceeding. There is no other evidence that the complainant can provide. Having failed to meet its burden, this matter should be dismissed with prejudice.

Submitted by:

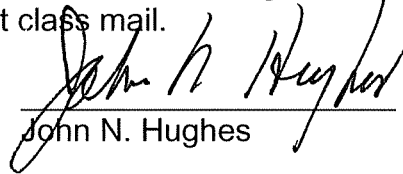


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Certificate of Service:

A copy of this answer was mailed to Mary Potter, 113 N. Washington St. Clinton, KY 42031, the 3<sup>rd</sup> day of November, 2011 by first class mail.



John N. Hughes