

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MOORE'S CHAPEL A.M.E. CHURCH)	
)	
COMPLAINANT)	
)	
V.)	CASE NO. 2011-00414
)	
WATER SERVICE CORPORATION OF)	
KENTUCKY)	
)	
DEFENDANT)	

ORDER

Moore's Chapel A.M.E. Church has filed a formal complaint against Water Service Corporation of Kentucky ("Water Service Corporation") in which it alleges that Water Service Corporation has improperly billed it for water service provided in December 2009. Finding that the Complainant has failed to meet its burden of proof, we deny the complaint.

Water Service Corporation, a Kentucky corporation organized under KRS Chapter 271B, owns and operates facilities used in the treatment, storage, transmission, and distribution of water to approximately 7,388 customers in Middlesboro and Clinton, Kentucky.¹

Complainant owns a building in Clinton, Kentucky which serves as the church for the eight members of its congregation. Water Service Corporation provides water service to this building. On December 7, 2009, Water Service Corporation issued a bill

¹ *Annual Report of Water Service Corporation of Kentucky to the Public Service Commission of Kentucky for the Year Ended December 31, 2011* at 5, 30; Application at ¶ 6.

for \$1,018.19 to Complainant for water service provided from October 26, 2009 to November 25, 2009. According to this bill, Water Service Corporation provided approximately 89,000 gallons of water to the Complainant during the billing period. For the prior month's service, Water Service Corporation had billed the Complainant \$22.57 for approximately 3,000 gallons of water.² For the following billing period, which ended on December 22, 2009, it billed the Complainant \$11.64 for 200 gallons of water.

While the Complainant apparently paid the bill for \$1,018.19, it filed a formal complaint with the Commission on October 23, 2011. In its Complaint, it alleged that Water Service Corporation had not properly billed it for service. It stated that "the meter was either misread, miscalculated or both" and that any error was on the part of the utility, "for which the Church should be refunded the overpayment."³

Denying the allegations of improper and erroneous billing, Water Service Corporation in its Answer asserts that the Complainant has failed to present sufficient evidence that the meter malfunctioned. It states that on several occasions prior to 2011 it offered to conduct field tests on the meter in question and that Complainant refused these offers. It further states that actual usage patterns fail to support Complainant's claims of a malfunctioning meter. If the meter was faulty, Water Service Corporation asserts, the billing errors should have continued as a meter cannot spontaneously repair itself. Finally, Water Service Corporation notes that, on July 27, 2011, the meter

² The bill that Water Service Corporation issued to Complainant on December 7, 2009 showed that Complainant had been billed \$22.57 for the prior billing period. Based upon the rates that were in effect for that period, the billed amount would be equivalent to 3,000 gallons of usage. See Tariff of Water Service Corp. of Ky., P.S.C. KY. No. 2, Sheet No. 42 (cancelled Nov. 9, 2009).

³ Letter from Mary B. Potter, Complainant's Counsel, to Kentucky Public Service Commission (Jun. 15, 2011) (filed Oct. 23, 2011 as attachment to Complaint).

in question was removed and tested by a third party who found it tested within acceptable accuracy limits.⁴

Following receipt of Water Service Corporation's Answer, the Commission ordered Water Service Corporation to produce the meter in question for testing. On January 18, 2012, Water Service Corporation transferred custody of the meter, which had been in storage since July 27, 2011, to Commission Staff. The following day, Commission Staff tested the meter at the Commission's Meter Laboratory in Frankfort, Kentucky. The results of these tests indicated the meter was within the accuracy requirements of 807 KAR 5:066, Section 15(2)(a).

After Commission Staff released the results of the test, the Commission, on April 9, 2012, directed Complainant to advise the Commission in writing within 20 days as to how it wished to proceed. When Complainant failed to respond within the time permitted, the Commission, on May 14, 2012, ordered that this matter stood submitted for decision.

The complainant bears the burden of proof in matters before an administrative body.⁵ In the absence of a defective meter, a customer is responsible for the quantity of water supplied.⁶ Here, the Complainant has failed to come forth with any evidence to

⁴ Answer at 2. See Letter from John N. Hughes, counsel for Water Service Corporation of Kentucky, to Jeff Derouen, Executive Director, Public Service Commission of Kentucky (Aug. 5, 2011) (containing test results on meter) (filed Aug. 5, 2011 in Case No. 2010-00476, *Application of Water Service Corporation of Kentucky for an Adjustment of Rates* (Ky. PSC filed Jan. 24, 2011)).

⁵ *Energy Regulatory Comm'n v. Kentucky Power Co.*, 605 S.W.2d 46, 50 (Ky. App. 1980).

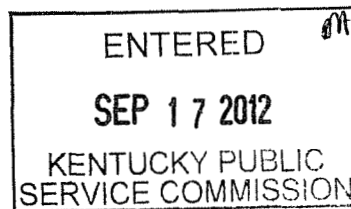
⁶ *Louisville Tobacco Warehouse Co. v. Louisville Water Co.*, 172 S.W. 928, 931 (Ky. 1915). See also Case No. 2006-00212, *Robert Young Family v. Southeastern Water Association* (Ky. PSC Jan. 25, 2007); Case No. 99-109, *Susan Elizabeth Spangler and Mark Lewis Farman v. Kentucky-American Water Company* (Ky. PSC Oct. 7, 1999).

support its belief that it was overbilled for water services. It affirmatively asserted that no leak was present. It simply asserted that it was drastically overbilled for one month's service. However, it has failed to reconcile how the alleged malfunction could have occurred only in the course of one month. Moreover, the Complainant's water meter was examined and found to be functioning properly. Because Moore's Chapel has failed to meet its burden, the Commission finds that the Complaint should be dismissed with prejudice.

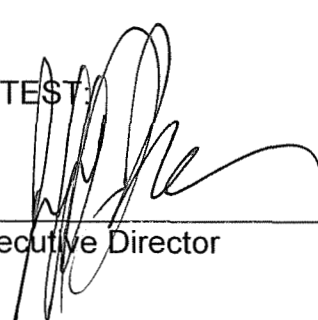
IT IS THEREFORE ORDERED that:

1. The Complaint is dismissed with prejudice.
2. This case is closed and shall be removed from the Commission's docket.

By the Commission



ATTEST:



Executive Director

Honorable John N Hughes
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