

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

BENT TREE CONDOMINIUM ASSOCIATION)	MAY 24 2019
)	
COMPLAINANT)	PUBLIC SERVICE
)	COMMISSION
vs.)	CASE NO. 2019-00133
)	
KENTUCKY-AMERICAN WATER COMPANY)	
)	
DEFENDANT)	

ANSWER AND MOTION TO DISMISS

Now comes the Defendant, Kentucky-American Water Company (“KAW”), and for its Answer to the Complaint¹ in this matter, makes the following admissions, denials, statements and defenses.

1. In response to the allegations in Paragraph 1 of the Complaint, KAW admits that Bent Tree Condominium Association (“Bent Tree”) is a KAW customer located at 401 Redding Road, Lexington, Kentucky 40517. KAW denies that Bent Tree’s members receive their water service from KAW. They may receive water KAW sells to its customer, Bent Tree, but individual members are not KAW customers. KAW is without information sufficient to respond to the balance of Paragraph 1 of the Complaint, and, therefore, denies same.

2. KAW admits the allegations in Paragraph 2 of the Complaint.

3. KAW denies the allegations in Paragraph 3 of the Complaint.

¹ The Commission’s May 14, 2019 Order in this matter directs KAW to respond to Bent Tree’s November 9, 2018 Complaint. However, the Commission’s April 26, 2019 Order rejected Bent Tree’s November 9, 2018 Complaint and directed Bent Tree to have an attorney file a signed Complaint. Bent Tree did so on May 6, 2019 and then the Commission entered its May 14, 2019 Order. KAW believes that the May 14, 2019 Order intended to direct KAW to respond to the May 6, 2019 Complaint which KAW hereby does. By doing so, KAW does not waive any right to respond to Bent Tree’s November 6, 2018 filing, which, on its face, is not a Complaint at all.

4. KAW admits the allegations in Paragraph 4 of the Complaint.

5. In response to the allegations in Paragraph 5 of the Complaint, KAW denies that it charges any rates to Bent Tree's members as those members are not KAW customers. KAW charges its tariffed rates to its customer, Bent Tree, and the Commission has exclusive jurisdiction over the regulation of the rates charged to Bent Tree.

6. In response to the allegations in Paragraph 6 of the Complaint, KAW states that KAW 278.030(1) speaks for itself and denies any allegations inconsistent with its language.

7. In response to the allegations in Paragraph 7 of the Complaint, KAW states that the Commission has approved KAW's currently tariffed rates as a result of Case Nos. 2015-00418 and 2018-00042. KAW denies the balance of the allegations in that Paragraph.

8. In response to the allegations in Paragraphs 8 and 9 of the Complaint, KAW states that KRS 278.260 and KRS 278.270 speak for themselves and denies any allegations consistent with their language. Further pleading, KAW states that the dispute between KAW and Bent Tree has nothing to do with the *rates* KAW charges or the service KAW provides. The dispute is rooted in the *volume* or *amount* of water consumed by Bent Tree as measured by the meters serving Bent Tree.

9. In response to the allegations in Paragraph 10 of the Complaint, KAW states that its currently tariffed rates were approved by the Commission in Case Nos. 2015-00418 and 2018-00042 and it has charged those rates to Bent Tree.

10. In response to Paragraph 11 of the Complaint, KAW denies that Bent Tree members receive water service from KAW. Bent Tree is KAW's customer. Bent Tree's members are not KAW customers. KAW has charged Bent Tree rates consistent with the rates set forth in KAW's Commission-approved tariff.

11. KAW is without information sufficient to respond to the allegations in Paragraph 12 of the Complaint, and, therefore, denies same.

12. In response to the allegations in Paragraph 13 of the Complaint, KAW admits that two meters serve Bent Tree as KAW's customer and that the meters are located on Kirklevington and Redding Roads. KAW is without information sufficient to respond to the balance of the allegations in Paragraph 13 of the Complaint, and, therefore, denies same.

13. In response to the allegations in Paragraph 14 of the Complaint, KAW admits that Bent Tree's water usage was above normal for time periods in 2017 and 2018. KAW denies the balance of the allegations in that Paragraph.

14. In response to the allegations in Paragraph 15 of the Complaint, KAW states that Mr. Marquette contacted various personnel at KAW at various times about elevated usage but that not all those personnel are in KAW's customer relations area. Based on information and belief, the first contact about elevated usage occurred in or about October or November of 2017. KAW denies the balance of the allegations in that Paragraph.

15. KAW admits the allegations in Paragraphs 16 and 17 of the Complaint.

16. In response to the allegations in Paragraph 18 of the Complaint, KAW admits receipt of a March 5, 2018 e-mail from Bent Tree, states that the language of the e-mail speaks for itself, and denies any description of that language that differs from the language itself.

17. In response to the allegations in Paragraphs 19 and 20 of the Complaint, KAW admits that a March 9, 2018 meeting occurred and that, without any obligation to do so, KAW performed listening tests in an attempt to assist Bent Tree with any problem it had downstream of the KAW meters. KAW is without information sufficient to respond to the balance of the allegations in those Paragraphs, therefore, denies same.

18. KAW is without information sufficient to respond to the allegations in Paragraph 21 of the Complaint, and, therefore, denies same

19. In response to the allegations in Paragraph 22 of the Complaint, KAW admits receipt of a May 25, 2018 e-mail from Bent Tree, states that the language of the e-mail speaks for itself, and denies any description of that language that differs from the language itself.

20. In response to the allegations in Paragraph 23 of the Complaint, KAW admits the existence of the June 21, 2018 communication referring Bent Tree to KAW Customer Advocacy but denies the balance of the allegations in that Paragraph.

21. In response to the allegations in Paragraph 24 of the Complaint, KAW admits the existence of the July 16, 2018 communication and the advice provided to Bent Tree. KAW denies the balance of the allegations in that Paragraph.

22. In response to the allegations in Paragraph 25 of the Complaint, KAW admits the existence of a July 25, 2018 e-mail to Bent Tree, states that the language of the communication speaks for itself, and denies any description of that language that differs from the language itself.

23. KAW admits the allegations in Paragraphs 26 and 27 of the Complaint.

24. KAW denies the allegations in Paragraphs 28, 29, and 30 of the Complaint.

25. KAW admits the allegations in Paragraph 31 of the Complaint.

26. In response to the prayer for relief following Paragraph 31 of the Complaint, KAW states that Bent Tree's Complaint should be dismissed with prejudice with no relief whatsoever.

27. KAW states that the meter in place at the premises in question (the Kirklevington meter location) during the relevant period was tested by KAW and that the meter test results

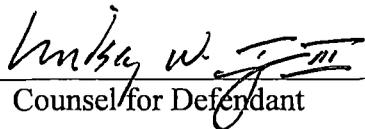
(copy attached²) show that the meter meets all applicable accuracy requirements. Therefore, the water meter readings in question are accurate and the indicated amount of water did, in fact, pass through the meter. Therefore, Bent Tree is liable to KAW for all amounts resulting from the indicated usage. *Robert Young Family v. Southeastern Water Association*, PSC Case No. 2006-00212, Order of January 25, 2007; *Susan Spangler and Mark Lewis Farman v. Kentucky-American Water Company*, PSC Case No. 99-109, Order of October 7, 1999; and *Moore's Chapel A.M.E. Church v. Water Service Corporation of Kentucky*, PSC Case No. 2011-00414, Order of September 17, 2012.

28. KAW denies each and every allegation in the Complaint not specifically admitted to be true herein.

WHEREFORE, KAW moves for a dismissal of the Complaint and that Bent Tree submit payment for all amounts owed to KAW.

Respectfully submitted,

Lindsey W. Ingram III
STOLL KEENON OGDEN PLLC
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507
(859) 231-3000
L.Ingram@skofirm.com

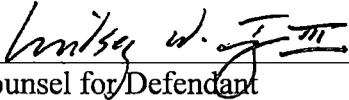
By 
Counsel for Defendant

² The account number has been redacted as required by 807 KAR 5:001, Section 4(10).

CERTIFICATE OF SERVICE

This is to certify that the original and 6 copies of the foregoing Answer and Motion to Dismiss have been filed on this 24th day of May, 2019 at the Public Service Commission and that a true and accurate copy of same has been served, via U.S. Mail, on the 24th day of May, 2019, upon the following:

Dennis G. Howard, II
Howard Law PLLC
740 Emmett Creek Lane
Lexington, Kentucky 40515



Counsel for Defendant

010311.003026/7946638.1

Kentucky-American Water Company

Customer Name Bent Tree Condo Account # XXXXXXXXXX
 Service Address 401 Redding Rd Premise# 9120028288
 Meter Size 2 Make N Number 60670947 Date 2/7/18

Readings

	GPM	Begin	End	% of Accuracy	Required Accuracy
Low flow	<u>2</u>	<u>77.400</u>	<u>77.501</u>	<u>101</u>	<u>95%-101%</u>
Intermediate flow	<u>15</u>	<u>77.501</u>	<u>77.6005</u>	<u>99.5</u>	<u>98.5%-101.5%</u>
Maximum flow	<u>100</u>	<u>77.6005</u>	<u>78.6045</u>	<u>100.4</u>	<u>98.5%-101.5%</u>

IF ANY OF THE TESTS ABOVE ARE NOT WITHIN THE REQUIRED ACCURACY LIMITS THEN FURTHER TESTING IS REQUIRED BELOW.

Readings

Flow Rate %
Of Capacity

	GPM	Begin	End	% of Accuracy
25%	_____	_____	_____	_____
50%	_____	_____	_____	_____
75%	_____	_____	_____	_____

Average of first test 100.3 Average of second test _____
 Less Standard: 100%
 Equal % of Error: _____ Fast _____ Slow _____
 Before Test Reading: 17077.400 after Test Reading 17078.6045
 Customer Witness? Yes _____ No

IF PERCENT OF ERROR IS GREATER THAN 2% THEN COMPLETE THE APPROPRIATE SECTION BELOW.

Length of time error is known to have existed _____
 FAST METER basis for refund _____ Amount of refund _____
 SLOW METER basis for additional Bill _____ Amount of additional Bill _____
 Comments Meter passed test, RF reading good. Will return to inventory as USAV after entering test results

Copy to: J. Riley

Disputes: _____ Meter Tech.: R. Mattingly

METER INFORMATION FORM

(As shown in SAP)

(Correct number of dials)

Meter # 060670947 ✓ Reading 17077 ✓

Make N Size 2" Address 401 BEDDING RD

Premise # 9120028288 Date Removed 2/5/18

Common Removal / Demo (No apparent problem with meter)

Customer Complaint Test (per Disputes or Local Office)

Stuck / Stopped

Burst / Leaking

Bad Register (Glass cracked, etc)

False Reading

Periodic Change (PSC only)

Other (Explain in notes)

New Meter # 060629350 Make N Size 2"

Reading 25852 (Correct number of dials)

MIU # 1481447624

Hot Rod

Name SOTW / BRIDGEMAN

Install Date 2/5/18

Name: Bent Tree Co



rested
By: TOWNSEK