

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ERNEST MILLER)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 95-228
)	
HIMA-SIBERT WATER DISTRICT)	
)	
DEFENDANT)	

O R D E R

This case involves a complaint against a water utility for alleged improper billing. At issue is whether Defendant Hima-Sibert Water District ("Hima-Sibert") improperly billed the Complainant for water service provided during February 1994. Finding no evidence of improper or incorrect billing, the Commission denies the Complaint.

Hima-Sibert is a water district, organized pursuant to KRS Chapter 74, which owns and operates facilities used to distribute water to approximately 513 customers in Clay County, Kentucky. It began operation in 1970.

Ernest Miller is a resident of Clay County, Kentucky, and is a customer of Hima-Sibert. On or about 1976, Hima-Sibert installed a water meter to provide service to the property on which Miller

resides. The meter sits aside a public road. A service line¹ which connects this meter to Miller's residence runs from the public road through an adjoining property to Miller's property. This service line, or at least the portion of the service line which runs over the adjoining property, has been in existence since on or before 1976.

In late November 1993, while reading Miller's water meter, Hima-Sibert employee Johnny Jewell noticed that Miller's water usage was very high and suspected a leak. He alerted Miller and accompanied Miller as he searched for the leak. After they were unable to locate the leak, Jewell left. Miller testified that he located the leak the following month in that portion of his service line which is situated on the adjoining property. He delayed in replacing this portion of his service line until January 1994.

The record is unclear as to the events between November 1993 and January 1994. Miller testified that he asked Jewell to discontinue service after the leak's discovery and that Jewell refused. He further testified that he shut off service at the meter in late November 1993 and did not restore service until mid-January 1994. Jewell denied that any request to discontinue service was made. He further testified that, when he read Mr.

¹ Commission Regulation 807 KAR 5:066, Section 1(7), defines service line as "the water line from the point of service to the place of consumption." Commission Regulation 807 KAR 5:066, Section 1(5), defines "point of service" as "the outlet of a customer's water meter."

Miller's water meter in December 1993, water was still running through the meter.

In February 1994, Hima-Sibert billed Miller \$2,486.51 for 692,000 gallons of water usage. Contending that he was not responsible for the water usage, Miller refused to pay. After Hima-Sibert discontinued his water service for nonpayment, Miller on May 12, 1995 brought his complaint against Hima-Sibert.²

Miller does not allege that his water meter malfunctioned. In fact, Hima-Sibert tested Miller's water meter for accuracy twice within one year of the high usage period.³ On each occasion, the water meter tested within the prescribed accuracy limits.

The gist of Miller's Complaint, rather, is that the location of the water service line leak shifted responsibility for the water loss to Hima-Sibert. Because the leak which caused the loss was on another's property, Miller argues, he should be held harmless for any water loss.

Commission Regulation 807 KAR 5:066, Section 12(2), directly contradicts Miller's argument. It provides:

Customer's responsibility. The customer shall furnish and lay the necessary pipe to

² Hima-Sibert denies the allegations of improper billing and refuses to provide the requested relief. It restored Miller's service pending the outcome of this proceeding.

³ In mid-1994 Hima-Sibert tested Miller's meter at the request of a Commission water utility inspector. In early 1994 after the high usage was recorded, the water utility again tested the meter. Transcript at 120-123.

make the connection from the point of service to the place of consumption and shall keep the service line in good repair and in accordance with such reasonable requirements of the utility as may be incorporated in its rules and regulations.

As the leak occurred beyond the metering point, it was clearly Miller's responsibility.

The water district's placement of Miller's meter on another's property was not unreasonable. Commission regulations do not require the placement of a water meter upon a customer's property. They merely require that "the point of service shall be located as near the customer's line as practicable." 807 KAR 5:066, Section 12(1)(b). Given the terrain in question, the existing area road network, and the fact that an easement for the service line over the adjoining property owner's land existed, Hima-Sibert has complied with the regulation.

Miller also contends that, at the time water service was originally extended to his property, Hima-Sibert agreed to assume responsibility for service line leaks located off Miller's property and to eventually relocate the water meter to Miller's property. Aside from Miller's testimony, the record contains no proof of such agreement. Hima-Sibert witnesses directly contradict Miller's claim. The record indicates that, although this alleged agreement existed for 20 years, Miller never asserted his rights under it. His failure to assert his rights under the alleged agreement weakens the credibility of Miller's claims of its existence.

"Applicants before an administrative agency have the burden of proof." Energy Regulatory Comm'n v. Kentucky Power Co., Ky., 605 S.W.2d 46, 50 (1981). Miller has failed to meet this burden. Accordingly, his complaint should be denied.

IT IS THEREFORE ORDERED that:

1. Miller's Complaint is denied.
2. Within 20 days of the date of this Order, Hima-Sibert shall present to Miller a reasonable partial payment plan to permit payment of the \$2,486.51. If Miller fails to agree to such plan, his water service may be discontinued.

Done at Frankfort, Kentucky, this 16th day of January, 1996.

PUBLIC SERVICE COMMISSION

Linda K Breathitt
Chairman

Edna J. Holes
Vice Chairman

Robert M. Davis
Commissioner

ATTEST:

Do Mills
Executive Director