

On January 7, 1999, the parties and Commission staff participated in an informal conference held at the Commission's offices. Following the conference, the parties entered into negotiations to resolve the issues raised by the Complainant. On March 16, 1999, the parties executed a Settlement Agreement, appended hereto, and jointly moved for the Commission's approval of that Agreement.

Pursuant to KRS 278.160(2) a utility cannot charge, demand, collect or receive from any person a greater or less compensation for any service than that prescribed in its filed tariff. With regard to the mall surcharge, the record indicates that Mountain Water has in fact charged and collected from Western Sizzlin a mall surcharge which is greater than that prescribed by its filed tariff. In accordance with Mountain Water's tariff, Western Sizzlin should be billed a mall surcharge of \$15.05 per month based upon the size of its meter (5/8 inch by 3/4 inch). The record reveals, however, that Mountain Water billed Western Sizzlin \$33.88 per month for a 1 inch meter from the time it began serving Western Sizzlin in 1985² until April 1998. In satisfaction of the overbilled mall surcharges, Mountain Water has agreed to pay Western Sizzlin \$5,722.93.

Mountain Water has also agreed to pay Western Sizzlin \$26,927 to settle the dispute concerning overbilled water usage. With regard to water usage, there is nothing to suggest that Mountain Water charged Western Sizzlin a rate other than that prescribed by its filed tariff. Rather the dispute concerns whether the approved rate was applied to the correctly measured consumption at Western Sizzlin. The evidence suggests that the original meter in service at Western Sizzlin did not accurately record

² According to its Response to Staff Information Request, paragraph 2, filed February 3, 1999, Mountain Water began to serve Western Sizzlin on or around January 1, 1985.

the water consumption of the restaurant. However, because actual consumption cannot be determined and because the evidence concerning the meter's accuracy is inconclusive, the overbilled amount cannot be calculated with certainty. The Commission therefore approves of the settlement figure reached by the parties and finds it to be reasonable in light of the evidence.

The Commission has considered the Settlement Agreement and finds that it is in accordance with the law, does not violate any regulatory principle, results in a reasonable resolution of this complaint, and is in the public interest.

IT IS THEREFORE ORDERED that:

1. The Settlement Agreement, appended hereto, is incorporated into this Order as if fully set forth herein.

2. The terms and conditions set forth in the Settlement Agreement are adopted and approved. The Commission interprets the entire contents of the Settlement Agreement to apply solely to the parties to this complaint and to matters raised by the Complainant.

3. Within 10 days of payment of the reimbursement amounts as prescribed in the Settlement Agreement, Mountain Water shall inform the Commission that the payment has been made to the Complainant.

4. From the date of this Order, Mountain Water will read the meter located at Western Sizzlin and all other meters located at the Southside Mall pursuant to Commission regulation.

5. This case is closed and shall be removed from the Commission's docket.

Done at Frankfort, Kentucky, this 21st day of April, 1999.

By the Commission

ATTEST:

Executive Director