

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

BENT TREE CONDOMINIUM ASSOCIATION)	
COMPLAINANT)	
)	
V.)	CASE NO. 2019-00133
)	
)	
KENTUCKY-AMERICAN WATER COMPANY)	
DEFENDANT)	

**BENT TREE CONDOMINIUM ASSOCIATION’S BRIEF AND MOTION TO
DEMAND KAWC FORFEIT ITS ILLEGALLY BILLED COSTS TO BENT TREE**

Bent Tree Condominium Association (“Bent Tree” or “Complainant”), pursuant to KRS 278.260, KRS 278.270, KRS, 278.040, KRS 278.030 and 807 KAR 5:001, Section 20, files this brief and moves the Commission to demand Kentucky-American Water Company (“Kentucky-American” or “Defendant”) forfeit \$8,035.12 billed to Bent Tree. Contrary to KRS 278.040(3), KAWC has violated the regulations pertaining to consumer complaints, including meter testing, which have resulted in unfair, unjust and unreasonable rates imposed on Bent Tree under KRS 278.030.

STATEMENT OF FACTS

The Complainant is Bent Tree Condominium Association, 401 Redding Road, #42, Lexington, Kentucky, 40517. Bent Tree is a non-profit organization consisting of residential, condominium dwellings (or “members”) collectively formed to maintain

property values of its individual structures via covenants and restrictions. Bent Tree's members receive their water service from Kentucky-American Water Company.

The Defendant is only entitled to charge rates as authorized by the Commission.

The Complainant's members are residential customers who receive water services from the Defendant and should only be billed at the rates as approved by the Commission and for the amounts used pursuant to KRS 278.004(3) and the applicable regulations governing same.

Complainant's members are billed by Bent Tree as part of their respective homeowner's association fees.

Bent Tree has two water meters. The first meter supplies 28 condominiums and is located in a meter vault on Kirklevington Road. The second meter is located in a meter vault on Redding Road and supplies 16 condominiums.

In July of 2017 the consumption and billings for the Kirklevington meter account nearly doubled and continued at these unusual high rates through on or about February 5, 2018, when KAWC removed the meter in question and daily consumption dropped back to historical levels and continues at a comparable level today. This assertion is based on actual monthly billings and a Kentucky-American hourly flow report.

In October 2017, Mr. Brack Marquette, president of Bent Tree, initially complained to Defendant in an attempt to seek resolution of the unusually high consumption billed to Brent Tree. However, this attempt and subsequent, two events, by Bent Tree to

understand and address the high billings communication with Kentucky American Water Company resulted in both long delays in gaining responses from Defendant, incorrect responses, as well as very little information to resolve the billing dispute.

More specifically, the Defendant informed Mr. Marquette in November 2017 that the meters would be tested for accuracy. Interestingly, the meters were originally tested on May 15, 2017, when the meters were placed into service.

On or about February 6, 2018, the Defendant installed two new meters and began taking hourly readings.

By letter from the Defendant dated February 27, 2018, Complainant was informed that the original and temporary meters were reading accurately.

On March 5, 2018, Mr. Marquette appealed to the Defendant for further explanation of the billing dispute by way of an email wherein he inquired 1) whether Complainant had a leak problem on its side of the meter and if so 2) how many gallons per hour were flowing through either a 2" pipe or a 3/4" pipe. Additional questions were posited to Defendant on an attached copy of a meter flow report from 2/27/2018 but were not answered by KAWC.

At an on-site meeting between Mr. Marquette and **Defendant** officials on March 9, 2018, the Defendant informed Mr. Marquette that a purported leak was **at the Redding Road location** and not the Kirklevington location. In other words, the Defendant provided

Bent Tree incorrect information as to where any ported leak and associated billing were associated.

On or about March 9, 2018, the Defendant performed listening tests at the dwellings associated with the Redding Road meter; determined that a purported leak existed; and characterized it as “intermittent.”

On or about May 25, 2018, the Complainant engaged the services of American Leak Detection to replicate the Defendant’s conclusion of a purported leak at the Redding Road meter’s dwellings. American Leak Detection could not replicate the Defendant’s conclusions.

Considering American Leak Detection’s results, on May 25 Mr. Marquette emailed Defendant requesting verification of the meter with the associated “leak” and to answer questions he had raised in his March 5, 2018, email.

After additional appeals for assistance to the Defendant, Defendant informed Mr. Marquette on June 21, 2018, that the matter had been referred to Defendant’s Customer Advocacy personnel.

On or about July 16, 2018, Mr. Marquette again appealed to Defendant for assistance with his dispute. Defendant’s Customer Advocacy personnel advised Mr. Marquette to email them the details of the dispute and provide his questions originally requested on March 5, 2018.

On or about July 25, 2018, Defendant verified that the alleged, suspected leak was associated with the **Kirklevington address**, the opposite of what KAWC attested in person on March 9, 2018, and not the Redding Road address. Defendant also provided consumption data for both meters.

Throughout this dispute, and to the best of Bent Tree's information, knowledge and belief, there have been **at least three** meters at the Redding Road address - the original meter removed on February 4, 2018, a temporary meter installed on February 4 or 5, 2018, (used during the testing of the original meter), and another meter installed on February 6th and in use today.

Complainant filed its Complaint on **November 9, 2018**. By Order dated **April 26, 2019**, the Commission notified Bent Tree to obtain counsel and refile its complaint if it was to be considered. A Complaint was timely and duly filed on May 6, 2019. To the best of its knowledge and throughout this dispute, Bent Tree has remained current on its Redding Road account and has made partial payment for the Kirklevington account. This assertion is based on bills supplied by KAWC counsel and incorporated into an excel sheet by underlying counsel on 6/12/2019 at 4:33pm. Moreover, the amount Bent Tree requests forfeiture is \$8,035.12. (See Attachment A whereat underlying counsel incorporated the bills into an Excel sheet.)

The Defendant's insistence that Bent Tree owes for this questionable and temporary sharp rise in consumption lacks adequate proof that the problem lies on the Bent Tree side of the meter.

In pursuit of causes for the exceptional billings, Bent Tree has encountered extraordinary long delays in Defendant's responses, misdirection from Kentucky-American to pursue leak detection investigations on the wrong ("Redding Road") meter, and numerous other instances of delay and lack of forthcoming information in response to Bent Tree's requests for information to resolve the dispute.

Defendant filed two (2) motions to dismiss, both of which were denied.

Ultimately, in order to exhaust its review of its complaint regarding the accuracy of the meter under the regulations, Bent Tree requested the Commission to conduct a test on its accuracy. Importantly, Bent Tree did not waive its rights to challenge the Commission's conclusions. Specially, KAWC, after a complaint was filed, did not remove the meter as required under 807 KAR 5:006(19). Indeed, as admitted by KAWC, the company placed the meter in service at another location once it was removed from Bent Tree on or about February 4, 2018. Accordingly, any test results are unreliable. Nonetheless, Bent Tree felt compelled to request the test under the regulations although it did yield to its results because it felt compelled to comply with the regulations. Importantly, because the chain of custody of the meter is in question had been compromised by not taking it out of service pursuant to 807 KAR 5:006(19), the results are unreliable, notwithstanding the Commission's averment the results were within acceptable parameters. See

email from Andrew Bowker dated July 30, 2021, at 1:43 pm and by inference, Commission filing dated August 18, 2021.

Importantly, on the July 30, 2021, the Commission, through a third party, performed a test of meter 060670947N but did NOT include a high-pressure test as it appeared the testing facility in Bowling Green was not equipped to provide such a test and, by the test technician's own admission in the presence of the PSC and Bent Tree representatives, such high-pressure tests on similar 2" meters is "usually done in the field."

In sum, The PSC cannot provide a definitive conclusion on the testing of a 2" meter without a high-pressure test in the field per its own expert.

Defendant has engaged in imposing unfair, unjust and unreasonable rates in violation of Kentucky law and regulations by overbilling Complainant for consumption of water services to the Kirklevington account.

ARGUMENT

I

A. CONTRARY TO KRS 278.040(3), KAWC HAS VIOLATED THE COMMISSION'S REGULATIONS PERTAINING TO CONSUMER COMPLAINTS, INCLUDING METER TESTING, WHICH HAVE RESULTED IN UNFAIR, UNJUST AND UNREASONABLE RATES IMPOSED ON BENT TREE UNDER KRS 278.030. THUS, KAWC SHOULD FORFEIT ITS CLAIM FOR ANY CONTESTED USAGE BY BENT TREE.

Mr. Marquette, on behalf of Bent Tree, made its first appeal for help to KAWC at the Company's office in October 2017. KAWC did not respond to Mr. Marquette for four weeks after this visit to KAWC.

Mr. Marquette, on behalf of Bent Tree, KAWC visited again on November 27, 2017, after hearing no response since October, with an yet another appeal for assistance, including a request that KAWC place a hold on KAWC bills. KAWC stated it would test the meter, but no date was given to Mr. Marquette. Mr. Marquette did not receive a response from KAWC for another three weeks, specifically from November 29 until December 14, 2017. Mr. Marquette contacted KAWC again on December 14, 2017, asking about meter testing and was told KAWC had until Dec 29, 2017, to test the meters.

KAWC did not contact Mr. Marquette again for seven and half weeks, specifically from December 14, 2017, until February 6, 2018. On February 6, 2018, KAWC informed Bent Tree that both Kirklevington and Redding Road meters had been replaced without explanation given.

B. CONTRARY TO KRS 278.040(3), KAWC HAS VIOLATED THE COMMISSION'S REGULATIONS PERTAINING TO CONSUMER COMPLAINTS, INCLUDING METER TESTING, WHICH HAVE RESULTED IN UNFAIR, UNJUST AND UNREASONABLE RATES IMPOSED ON BENT TREE UNDER KRS 278.030.

See Argument A. Moreover, based solely on the foregoing, KAWC has violated numerous regulations and statutes, all of which taken as a whole, require KAWC to forfeit all contested usage and billing by KWAC.

C. KAWC VIOLATED 807 KAR 5:006, SECTION 10, MANDATING THE HANDLING OF A CUSTOMER COMPLAINT; THUS, KAWC HAS FORFEITED ITS RIGHT TO COLLECT A BILL BASED ON A COMPLAINT NOT INVESTIGATED PURSUANT TO PSC REGULATION.

Since Bent Tree Condominiums initiated its inquiring to KAWC in October 2017, several anomalies have not been adequately addressed in order to assure that a complete investigation into the uncharacteristically high billings to Bent Tree for meter 060670947N in the Summer/Fall of 2017 is conducted and any decision by the PSC is not based solely on an incomplete meter test of 060670947N on July 29, 2021.

Specifically, the compelling absences of fact are as follows.

The July 29, 2021, PSC managed test of meter 060670947N did NOT include a high-pressure test as it appeared the testing facility in Bowling Green was not equipped to provide such a test and, by the test technician's own admission in the presence of the PSC and Bent Tree representatives, such high-pressure tests on similar 2" meters is "usually done in the field."

The PSC cannot provide a definitive conclusion on the testing of a 2" meter without a high-pressure test pursuant to its own expert.

Meter 060670947N had a reading as documented by KAWC of 17077.400 when it was removed from Bent Tree on February 4, 2018, **four months after Bent Tree reported an issue and requested the meter be replaced.** On July 23, 2021, the same meter 060670947N had a reading of 24277.000 before the PSC managed to perform a belated meter test. Why was this meter placed into service after it was reported questionable/faulty by Bent Tree to KAWC? A challenged meter cannot be placed into service once removed from the suspect location and then be brought back for testing in

a case as if it was never used at any other location of other than Bent Tree contrary to 807 KAR 5:006, Section 10.

Bent Tree was not informed what day meter 060670947N would be removed. The subsequent removal of this meter on February 4, 2018, was 4 (four) months after Bent Tree initially requested it be tested, removed and replaced.

KAWC has suggested/contended that Bent Tree altered water usage after meter 060670947N was removed to manipulate/manufacture a decrease in usage. Since Bent Tree was not informed until after the fact that meter 060670947N was removed on February 4, 2018, it had no knowledge which would have made possible its alleged manipulation of water consumption after the meter removal.

Rather, the facts show that the last day of metering on meter 060670947N consumption was over 8000 gallons on February 4, 2018, as it had been in the highest consumption months which caused Bent Tree to report a problem in the first place. The very next day February 5, 2018, KAWC showed temporary meter 060629350N, which replaced 060670947N, registered usage at the typical rate of 5000 gallons - a rate that continues to be typical from that day forward until now just as it had been prior to July 2017 when the high volumes began appearing.

The PSC cannot provide a conclusive decision in this case without examination of whether the meter reading equipment on meter 060670947N was working properly from June 2017 to February 2018. A meter test can read accurately but the meter reading module could be faulty without a field test.

D. KAWC VIOLATED 807 KAR 5:006, SECTION 10, MANDATING THE HANDLING OF A CUSTOMER COMPLAINT; THUS, KAWC HAS FORFEITED ITS RIGHT TO COLLECT A BILL BASED ON A COMPLAINT NOT INVESTIGATED PURSUANT TO PSC REGULATION.

807 KAR 5:006, Section 10, reads in total:

Section 10. Customer Complaints to the Utility. (1) Upon complaint to a utility by a customer at the utility's office, by telephone or in writing, the utility shall make a prompt and complete investigation and advise the customer of the utility's findings.

(2) The utility shall keep a record of all written complaints concerning the utility's service. This record shall include:

(a) The customer's name and address;

(b) The date and nature of the complaint; and

(c) The disposition of the complaint.

(3) Records shall be maintained for two (2) years from the date of resolution of the complaint.

(4) If a written complaint or a complaint made in person at the utility's office is not resolved, the utility shall provide written notice to the customer of his or her right to file a complaint with the commission and shall provide the customer with the mailing address, Web site address, and telephone number of the commission.

(5) If a telephonic complaint is not resolved, the utility shall provide at least oral notice to the customer of his or her right to file a complaint with the commission and the mailing address, Web site address, and telephone number of the commission.

Mr. Marquette made a complaint with KAWC in person at the utility's office.

Accordingly, the Company was required to adhere to its obligations to provide the necessary information and resolve the matter as expeditiously as possible. Even if Mr. Marquette had simply called in the complaint, the same rules apply. Nonetheless, no significant action was taken by the Company until from October 2017 until February 2018.

E. THE METER IN QUESTION WAS NOT REMOVED FROM SERVICE AFTER A FORMAL COMPLAINT WAS MADE TO KAWC, CONTRARY TO THE PSC REGULATIONS. CONSEQUENTLY, KAWC FORFEITS ITS RIGHTS TO COLLECT A BILL BASED ON A VIOLATION OF THE ONE OF THE

REGULATIONS GOVERNING METER TESTING AND ACCURATE BILLING.

KAWC has suggested/contended that Bent Tree altered water usage after meter 060670947N was removed to manipulate/manufacture a decrease in usage. Since Bent Tree was not informed until after the fact that meter 060670947N was removed on February 4, 2018, it had no knowledge which would have made possible its alleged manipulation of water consumption after the meter removal.

Instead, the facts show that the last day of metering on meter 060670947N consumption was over 8000 gallons on February 4, 2018, as it had been in the highest consumption months which caused Bent Tree to report a problem in the first place. The very next day February 5, 2018, KAWC showed temporary meter 060629350N, which replaced 060670947N, registered usage at the typical rate of 5000 gallons . . . a rate that continues to be typical from that day forward until now just as it had been prior to July 2017 when the high volumes began appearing.

F. THE TEST PERFORMED ON THE METER WAS FAULTY UNDER 807 KAR 5:006(19). THUS, THE PSC SHOULD NOT RELY ON IT AS DEPOSITIVE OF THE DISPUTE AT HAND. COMPOUNDED WITH KAWC'S VIOLATIONS OF REGULATIONS DESIGNED TO PROTECT THE CONSUMER, THE PSC SHOULD HOLD IN FAVOR OF THE COMPLAINT AND DISMISS KAWC'S BILL RELATIVE TO THE RELEVANT BILLING PERIOD.

The July 30, 2021, PSC managed test of meter 060670947N did NOT include a high-pressure test as it appeared the testing facility in Bowling Green was not equipped to provide such a test and, by the test technician's own admission in the presence of the PSC and Bent Tree representatives, such high-pressure tests on similar 2" meters is

“usually done in the field.” This raises seriously doubt, if not even nullifies, the accuracy of the results.

The PSC cannot provide a definitive conclusion on the testing of a 2” meter without a high-pressure test pursuant to its own expert. Accordingly, it should not be considered reliable in determining the accuracy of the meter.

II

DESPITE KRS 278.225, RELATED TO A CONSUMER’S LIABILITY FOR SERVICES RENDERED AND BILLED WITHIN TWO (2) YEARS, THE COMPLAINT IS NOT RESPONSIBLE FOR THOSE SERVICES RENDERED GIVEN KAWC’S INDIFFERENCE TO THE PSC REGULATIONS.

Any argument by KAWC that it is entitled by to pay because of negligence on its part, is completely misplaced. As the KRS 278.225 states:

278.225 Time limitation on billing -- Liability for unbilled service. All service supplied by a utility shall be billed within two (2) years of the service. No customer shall be liable for unbilled service after two (2) years from the date of the service, unless the customer obtained the service through fraud, theft, or deception.

In the event unlikely event KAWC’s measure of consumption is correct, forfeiture to end the dispute between the Company and Bent Tree is permissible given the extenuating circumstances given precedent. As has been seen in the metamorphosis of acquisitions through AWK and its parent AWWA, as long as stakeholders pay for the transaction, there is no harm. Indeed, but for the acquiescence of KAWC, its goodwill to the Commission and the public is compromised.

KAWC has not alleged any fraud, theft or deceit by Bent Tree. In the event KAWC attempts to maintain any error in its billing is still recoverable is misplaced. Indeed, if the Commission accepts this argument, then KRS 278.040(3), and the aforementioned regulations are rendered a nullity. Stated in colloquial terms, KAWC, as monopoly, would usurp the Commission's authority.

WHEREFORE, Bent Tree files this brief and moves KAWC forfeit \$8,035.12 billed to Bent Tree. Contrary to KRS 278.040(3), KAWC has disregarded the regulations pertaining to consumer complaints, including meter testing, which have resulted in unfair, unjust and unreasonable rates imposed on Bent Tree under KRS 278.030.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that this **BENT TREE'S BRIEF AND MOTION TO DEMAND KAWC FORFEIT ITS ILLEGALLY BILLED COSTS TO BENT TREE**, is a true and accurate copy of the document being electronically filed with the Commission today, this the 24 of August 2021.



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