

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JUDY KEITH)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 2020-00409
)	
SOUTHERN MADISON WATER)	
DISTRICT)	
)	
DEFENDANT)	

ANSWER

Defendant Southern Madison Water District (“Southern Madison” or “Defendant”) for its Answer to the Complaint of Judy Keith (“Complaint”) states:

Answer

In accordance with the Kentucky Public Service Commission’s Order of January 15, 2021 in the above-captioned proceeding, Southern Madison for its Answer, and in response to the specific averments contained in said Complaint, states as follows:

1. Defendant is without sufficient knowledge or information to form a belief to the allegations contained in the first 13 sentences of “Description of Water Problems,” and, therefore, denies same.

2. Defendant admits the allegations contained in the fourteenth through sixteenth sentences of “Description of Water Problems” to the extent that Complainant contacted Southern Madison several times after July 25 to report a problem, but denies the remaining allegations in these sentences.

3. Defendant admits the allegations contained in the seventeenth sentence of the first paragraph of “Description of Water Problems” to the extent that Complainant’s water bill for water used during the commencing on June 1, 2020 and ending on July 2, 2020 and the period commencing on July 2, 2020 and ending on August 12, 2020 were significantly higher than normal. The Complainant received a leak adjustment from the Defendant in the sum of \$171.53 pursuant to the Leak Adjustment provisions of the Defendant’s Tariff on August 25, 2020.

4. Defendant admits the allegations contained in the nineteenth sentence of the first paragraph of “Description of Water Problems.”

5. Defendant is without sufficient knowledge or information to form a belief regarding the remaining allegations contained in the first paragraph of “Description of Water Problems,” and, therefore, denies same.

6. Defendant is without sufficient knowledge or information to form a belief regarding the allegations contained in the second paragraph of “Description of Water Problems,” and, therefore, denies same.

7. Defendant admits the allegations contained in the first sentence of the third paragraph of “Description of Water Problems” but is without sufficient knowledge or information to form a belief regarding the remaining allegations in that paragraph, and, therefore denies same.

8. Defendant is without sufficient knowledge or information to form a belief regarding the allegations contained in the written statement of Michelle Thompson, and, therefore denies same.

9. Defendant is without sufficient knowledge or information to form a belief regarding the allegations contained in the written statement of Jordan Rouland, and, therefore denies same.

10. Defendant admits the allegations contained in the first paragraph of Dr. Kenneth Blank’s letter of September 26, 2020 to the extent that Southern Madison repaired a leak in the water service line connecting his meter to the water main running along South Dogwood Drive, but is without sufficient knowledge or information to form a belief regarding the remaining allegations, and, therefore denies same.

11. Defendant admits the allegations contained in the second paragraph of Dr. Kenneth Blank’s letter of September 26, 2020 to the following extent:

a. On June 25, 2020, Dr. Blank reported to Southern Madison a water leak on his property at 823 South Dogwood Drive, Berea, Kentucky.

b. Southern Madison employees reported to his property and repaired the leak, which was in a service line that ran from the water main to the meter serving Dr. Blank's property.

c. No repairs were performed on the customer's side of the meter. Water to the main running along South Dogwood Drive was not shut off.

d. The service line was repaired using repair techniques that did not require the water in the water main to be shut off.

12. Defendant admits the allegations contained in the third and fourth paragraphs of Dr. Kenneth Blank's letter of September 26, 2020.

13. Defendant is without knowledge or information sufficient to form a belief regarding the allegations set forth in Complainant's letter of October 12, 2020 to Tommy Bussell or in the attachment labeled "Water damage expenses to 1085 S. Dogwood Drive, Berea, KY," and, therefore denies same.

14. As to the allegations contained in Complainant's letter of November 2, 2020 to the Public Service Commission, Defendant specifically denies:

a. The charges billed to Defendant were excessive, unlawful, unreasonable or inaccurate. Such charges reflected actual meter readings.

b. At no time when repairing the service line leading to Dr. Blank's property did Southern Madison employees shut off water service in the area.

c. Southern Madison did not cause any damage to Complainant's facilities nor did its employees' actions result in excessive air pressure accumulating in South Madison's water mains.

15. Defendant has no knowledge or information sufficient to form a belief as to the allegation that Michelle Thompson experienced the same excessive air pressure that Complainant allegedly experienced, and, therefore denies same.

16. Based upon its knowledge and belief, Defendant affirmatively states:

a. At some time on or before July 24, 2020, a dump truck loaded with rock entered the Complainant's property. The rock was to be spread on the Complainant's driveway. While on the property and attempting to maneuver a sharp turn, the loaded dump truck left the driveway and ran over the earth above the portion of the service line between Complainant's booster pump and cottage.

b. The weight of this loaded dump truck crushed the service line and likely created a pressure spike. If the weight caused the service line to rupture, then air would have entered the line. The ruptured line would have resulted in an abnormal amount of water running through the meter serving the Complainant's property.

17. All allegations not specifically admitted are denied.

First Affirmative Defense

The Complaint fails to set forth any claim upon which relief can be granted by this Commission and, therefore, should be dismissed.

Second Affirmative Defense

The Complaint fails to set forth a *prima facie* case that Southern Madison has violated its tariff or any statute or Commission regulation, and the Complaint should be dismissed for that reason.

Third Affirmative Defense

The Commission lacks jurisdiction over the Complaint as the only relief sought by the Complaint is the award of monetary damages.

Fourth Affirmative Defense

Original Sheet No. 23 of Southern Madison's tariff on file with the Commission provides that Southern Madison "shall not be liable in the event of, or for any loss, injury or damage to persons or property resulting from interruptions in service, excessive or . . . inadequate water pressure, or otherwise unsatisfactory service, whether or not caused by negligence." The Complaint's requested relief is contrary to the expressed terms and conditions to which Complainant agreed to receive service.

Fifth Affirmative Defense

The filed rate doctrine requires that utility companies strictly adhere to their tariffs, which are on file with, and approved by, the Commission for service.¹ Kentucky's state and federal courts have recognized and applied this principle,² and the Commission has labeled the doctrine "the bedrock of utility rate regulation." Kentucky's treatment of the filed rate doctrine mirrors that of the United States Supreme Court, which declared that the "[t]he rights as defined by the tariff cannot be varied or enlarged by either contract or tort of the carrier."³ The Complaint requests the Commission to issue an order that directly contravenes Southern Madison's unambiguous tariff.

WHEREFORE, Southern Madison Water District requests that the Commission enter an Order dismissing the Complaint with prejudice.

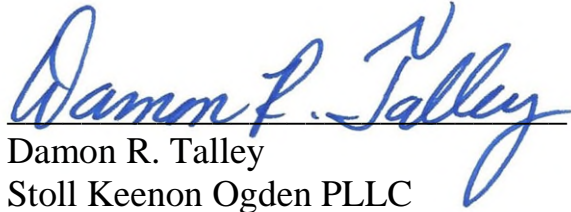
¹ *North Marshall Water District*, Case No. 95-107 (Ky. PSC Oct. 13, 1995) Order at 2. *See also Kentucky Power Company*, Case No. 93-380 (Ky. PSC Oct. 18, 1993) Order at 1.

² *Commonwealth v. Anthem Ins. Cos., Inc.*, 8 S.W.3d 48, 52 (Ky. App. 1999); *Big Rivers Elec. Corp. v. Thorpe*, 921 F.Supp. 460, 464 (W.D. Ky. 1996).

³ *Anthem*, 8 S.W.3d at 51, quoting *Keogh v. Chicago & Northwestern Ry.*, 260 U.S. 156, 163 (1922). *See also AT&T v. Central Office Telephone*, 524 U.S. 214 (1998).

Dated: January 25, 2021

Respectfully submitted,



Damon R. Talley
Stoll Keenon Ogden PLLC
P.O. Box 150
Hodgenville, KY 42748-0150
Telephone: (270) 358-3187
Fax: (270) 358-9560
damon.talley@skofirm.com

Tracy Todd Blevins
Blevins Law, PLLC
400 Richmond Road North, Suite C
Berea, KY 40403
Telephone: (859) 985-5410
Fax: (859) 985-5482
tblevins@blevinslaw.net

*Counsel for Southern Madison Water
District*

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that Southern Madison Water District's electronic filing of this Answer is a true and accurate copy of the same document being filed in paper medium; that the electronic filing was transmitted to the Public Service Commission on January 25, 2021; that there are currently no parties that the Public Service Commission has excused from participation by electronic means in this proceeding; and that within 30 days following the termination of the state of emergency declared in Executive Order 2020-215, this Application in paper medium will be delivered to the Public Service Commission. A copy of this document was also served on Dr. Judy Keith this day by electronic mail at renewctr@gmail.com.


Damon R. Talley