

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:)	
)	
JULIA LYNN JOHNSTONE)	
)	
COMPLAINANT)	
)	
V.)	CASE NO.
)	2008-00502
)	
SOUTH ANDERSON WATER DISTRICT)	
)	
DEFENDANT)	

O R D E R

By Order dated February 5, 2010, the Commission found that there was sufficient information in the record and, unless requested by either party within 10 days of the Order, no hearing would be necessary. As neither party requested a hearing, this matter stands complete.

On December 4, 2008, Julia Lynn Johnstone ("Complainant") filed a formal complaint with the Commission against South Anderson Water District ("South Anderson"). Complainant alleges that South Anderson billed her \$421.03 for repairing a leak that it blamed on her and then disconnected her water service when she did not pay the cost of the repairs. Complainant disputes that she tampered with the meter or broke anything as a result of her actions, or that she owes South Anderson for the cost of repairs. South Anderson's response is that Complainant's actions caused the leak and she should, therefore, be required to pay the cost of the necessary repairs.

FACTS

Complainant leases a farm in Lawrenceburg, Kentucky and is a customer of South Anderson.¹ On July 2, 2008, she noticed a leak at her meter when she used the meter to turn her water back on after she had earlier turned it off to repair a “substantial” leak at her barn.² Complainant states that she called South Anderson to report the leak at the meter on July 2, 2008. On July 3, 2008, she talked with South Anderson personnel and requested that the leak be investigated. She stated, “I had noticed this, as I had gone to the meter to turn the water on. I had turned it off to repair a leak at the barn. There is no other place to shut off the water.”³ During this conversation, she was told that she was not permitted to enter the meter box and tamper with the water district’s equipment. Complainant states that this was relayed to her in an accusatory and very aggressive manner and that she was then accused of “breaking something.”⁴ She later received a “legal letter accusing me of tampering, as if I were trying to steal water.”⁵

South Anderson responds that, on July 3, 2008, the same day that Complainant reported the leak, it investigated her concerns and determined that the feed line to Complainant’s meter had been damaged. Because of Complainant’s continued ability

¹ Complainant resides in Lexington, Kentucky and leases the farm in Lawrenceburg to keep livestock.

² Complaint at 3 (December 4, 2008); Complainant’s Response to Commission Staff’s First Set of Interrogatories and Request for Production of Documents to Julia Lynn Johnstone at 1, paragraph 11 (July 20, 2009). South Anderson states that this date was July 3, 2008, Answer at 4, Chain of Events Log (December 24, 2008).

³ Complaint at 1.

⁴ Id.

⁵ Id.

to receive water, the July 4 holiday, and the minimal water loss that was expected, the repairs were scheduled for a later date.⁶ On July 7, 2008, South Anderson sent Complainant a utility tampering letter and South Anderson's tariff sheet that listed its available remedies when someone tampers with its facilities.⁷ On July 14, 2008, South Anderson repaired the leak.⁸

On July 15, 2008, when Complainant was at her farm, she noticed that a large area had been dug up on South Anderson's side of the meter and that there was still water in the meter box.⁹ On July 17, 2008, South Anderson sent an invoice to Complainant for \$421.03 to reflect its costs, including labor, equipment and materials used, to repair the damage to its property.¹⁰ After receiving this invoice, Complainant contacted the Commission's Division of Consumer Services to request mediation.¹¹

South Anderson sent Complainant a second invoice for the repair costs on September 2, 2008, as there had been no response to the initial invoice. When this second invoice was not paid and Complainant did not otherwise respond, South Anderson added the amount to her account.¹²

⁶ Answer at 4, Chain of Events Log (December 18, 2008).

⁷ South Anderson Water District of Lawrenceburg, Kentucky, Rates & Charges and Rules and Regulations, Original Sheet 40, Z(1)(2) (effective May 28, 2005). This was the same letter that Complainant reported receiving.

⁸ Answer at 5, Chain of Events Log (December 18, 2008).

⁹ Complaint at 3.

¹⁰ Answer at 5.

¹¹ Complaint at 3.

¹² Answer at 5.

As of November 5, 2008, Complainant had still not paid for the cost of repairs and South Anderson disconnected her water service. When Complainant went to her farm to water her horses on November 8, 2008, she discovered that her water service had been disconnected. She “borrowed a plumber’s key from a friend, and turned the water back on”¹³ On November 10, 2008, Complainant contacted the Commission¹⁴ and complained that her water service had been disconnected. South Anderson was advised by Commission Staff that Complainant was disputing the charges for repairs.¹⁵ South Anderson reactivated Complainant’s water service at that time.

DISCUSSION

The issue before the Commission is whether South Anderson is justified in holding Complainant responsible for damage to its property or whether it is not justified in doing so and should be required to remove the \$421.03 repair cost from Complainant’s account.

Although Complainant admits that she turned her water on and off at the meter twice in the summer of 2008 and again in November of that year, at least once by using vice grips, she denies that her actions caused the damage that led to the \$421.03 repair cost. “Their claim was that I had used improper equipment to shut off the water. . . . Be that as it may, I present that my actions and intent were to repair an emergency water leak, and having also used a plumbers key, I cannot see the measurable difference in

¹³ Complaint at 4.

¹⁴ Commission’s Division of Consumers Services.

¹⁵ Id.

how they work.”¹⁶ After “speaking with several people who had knowledge of plumbing repair, some professional plumbers,”¹⁷ her father, who did a lot of plumbing, and consulting JustAnswer.com, she claims she received consistent answers that supported her position.¹⁸ Complainant further argues that because the damage was on South Anderson’s side of the meter, it was not her responsibility to pay for repairs.¹⁹

Complainant justifies her actions on July 2, 2008 because she needed to repair an “emergency” leak in her barn and there was no other place to shut off the water. “[A]t one time there was a shut off valve . . . there is not currently a working shut-off valve.”²⁰ South Anderson disputes that there was an emergency and states that approximately four months prior to July 2, 2008, South Anderson sent her two “high-usage” notices. These notices were sent to advise Complainant that an unusually high volume of water was going through the meter. The first such notice was sent to Complainant on February 18, 2008 and another on March 31, 2008. Complainant did not dispute that the notices were received.²¹

South Anderson’s position is that Complainant’s actions caused the damage at the meter on July 2, 2008 and that she should be responsible for the repair costs. Upon

¹⁶ Complaint at 3.

¹⁷ Id.

¹⁸ Complainant’s Response to Commission Staff’s First Set of Interrogatories and Request for Production of Documents to Julia Lynn Johnstone (Jul. 20, 2009) at 1-2.

¹⁹ Complaint at 3.

²⁰ Complainant’s Response to Commission Staff’s First Set of Interrogatories and Request for Production of Documents to Julia Lynn Johnstone (Jul. 20, 2009) at 1.

²¹ Id.

its investigation on July 3, 2008, South Anderson personnel discovered that the line feeding the meter had been damaged. It determined that Complainant's unauthorized practice of turning her water on and off at the meter created excessive vibration and movement of the meter setting which damaged the inlet side fittings/piping.²²

The Commission's regulations have authorized South Anderson and other water utilities to adopt rules and regulations concerning their operations, including the responsibilities of customers. 807 KAR 5:066, Section 12(2), states:

The customer 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 administrative regulations.

South Anderson has adopted, and the Commission has approved, several provisions that apply to the matter at hand. One of these requirements is that its customers must install and maintain a shut-off valve:

The applicant/customer must lay the necessary pipe to make the connection from the point of service to the point of usage and be financially responsible for all costs associated with the installation and maintenance of his/her service line plumbing, including a shut-off valve. . . .²³

Complainant did not have a shut-off valve and was in violation of South Anderson's tariff at all times in question.

Complainant's argument that she was not guilty of tampering because she was not attempting to steal water is not correct. Tampering does not require the intent to steal water or damage the utility's property. Tampering alone is justification for the

²² South Anderson's Response to Commission Staff's Supplemental Interrogatories at 4 (October 22, 2009).

²³ South Anderson Water District of Lawrenceburg, Kentucky, Rates & Charges and Rules and Regulations, Original Sheet No. 36, effective May 28, 2005.

termination of water service under South Anderson's applicable Rules and Regulations, Section 2(d)(8):

Tampering with meter, meter seal, service, valves, or other system facilities, or permitting such tampering by others will constitute grounds for termination of service.

A person who tampers with "any structure appurtenance or equipment which is part of the utility's water system . . . will be subject to all legal remedies accorded the district and/or discontinuance of water service and shall pay the cost of repairing or replacing the utility's facilities."²⁴

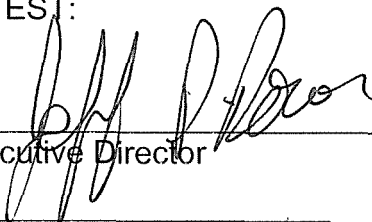
After consideration of the record, the Commission finds that Complainant did tamper with property belonging to South Anderson on several occasions and that, by using the meter to turn water on and off, she damaged South Anderson's property. The Commission also finds that Complainant is subject to all legal remedies accorded South Anderson, including discontinuance of water service and payment for the cost of repairs.

IT IS THEREFORE ORDERED that:

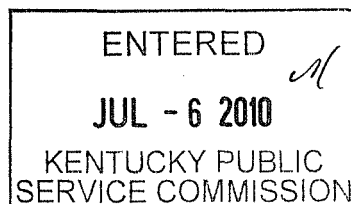
1. Complainant's complaint and request that South Anderson remove the repair charges of \$421.03 from her account is denied.
2. This case is closed and removed from the Commission's docket.

By the Commission

ATTEST:



Executive Director



²⁴ Id. at Original Sheet No. 40, Z(2).

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