

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

No. 2009-00483

JTB REAL ESTATE LLC d/b/a TARLETON CROSSING APARTMENTS, v. KENTUCKY-AMERICAN WATER COMPANY, COMPLAINANT DEFENDANT
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Complainant's Response

In accordance with the Commission's Order entered January 15, 2010, the complainant, JTB Real Estate LLC d/b/a Tarleton Crossing Apartments ("JTB") hereby responds to the Answer filed by Defendant Kentucky-American Water Company ("KAWC") and informs the Commission that JTB's complaint should not be dismissed — because it has not been satisfied. KAWC's Answer shows that there are material disputes about relevant facts, and raises more questions than it answers.

In its Answer (¶¶ 3,8), KAWC alleges various billing credits applied to JTB's account(s). In ¶3, apparently referring to an adjustment of which JTB received notice in July 2008, KAWC alleges various facts and combines them in calculations of an adjustment claimed to total \$634.45 and to have been split between a "miscellaneous bill" and a "regular monthly bill" in July 2008. In ¶ 8, apparently referring to an adjustment of which JTB received notice in October 2008, KAWC alleges various facts and combines them in calculations of an adjustment claimed to total \$1741.31, applied as a credit on the 10/27/09 bill. KAWC actually denies the statements in Complaint ¶¶ 3 and 8 which were taken verbatim from 7/2/08 and 10/21/09 KAWC notices respectively. The 7/2/08 notice was of a \$453.64 adjustment and 63,000 "excess gallons" of water; neither the dollar amount nor the volume can be matched up to the numbers given in

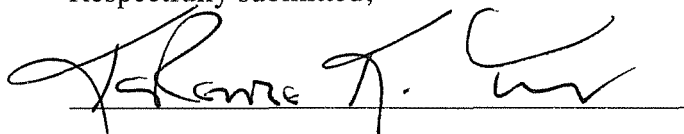
Answer ¶3 or to the amounts combined in the two alleged adjustments. Similarly, the 10/21/09 notice was of a \$1662.40 adjustment, which does not match up with the numbers in Answer ¶ 8. KAWC does not identify the period of the alleged “total usage” or 6- or 12- month “historical average of usage” it references in ¶¶ 3 and 8, respectively; it also provides no supporting documents and no explanation for why the adjustment method described in Answer ¶3 differs from that in ¶8. Furthermore, assuming that the adjustment was made to usage in mid-2008, then the preceding months’ overages affected the 6-month average on which the adjustment was based; the 12-month average on which the 2009 claimed adjustment was based on a 12-month average that would have been affected by prior months’ overages.

In its Answer (¶¶ 2,4, 6, 8), KAWC makes various allegations about leaks at the JTB premises and disclaims or is ambiguous about responsibility therefor. To the extent that KAWC denies statements in the Complaint, there is a direct dispute about evidently material facts. It is unclear from other KAWC allegations as to whether there is a dispute. For example, Answer ¶4 denies the corresponding Complaint paragraph — which is about the inaccuracy and testing of the street meter; however, Answer ¶4 generally corroborates the Complaint’s statements about when the meter was pulled for testing and reinstalled, and then focuses on a leak occurring around the time of the reinstallation. KAWC does not expressly deny that its actions were the cause of the leak, and its statements in Answer ¶4 are not inconsistent with a connection between the reinstallation work and the leak. Further inquiry of, or clarification from, KAWC is needed.

In its Answer (¶¶ 2, 4, 5, 6, 9), KAWC makes various allegations about the new meters, their testing, and their accuracy. To the extent that KAWC denies or contradicts statements in the Complaint, there is a direct dispute about evidently material facts. KAWC is ambiguous about or does not directly address other statements, and is ambiguous or inconsistent about still

others. For example, in Answer ¶4, KAWC alleges that the street meter was “reinstalled” on 8/27/09 after testing; however, in the same paragraph, it denies wholesale the Complaint ¶3 allegations, including that it has represented that the meter was reinstalled. In addition, KAWC contends that the meter “passed the test” — without stating which test and despite an 8/12/09 notice to JTB that the meter had passed as to two flows, but not mentioning the result as to low-flow. Compare that with the Answer ¶5 allegation that the laundry meter “passed all flows.” In addition, KAWC makes no mention in ¶4 or ¶5 of the prior notice (or lack thereof) given to JTB of the testing. Further inquiry of, or clarification from, KAWC is needed; it is possible that there is no genuine dispute from KAWC about some of the claims made by JTB in its Complaint.

Respectfully submitted,



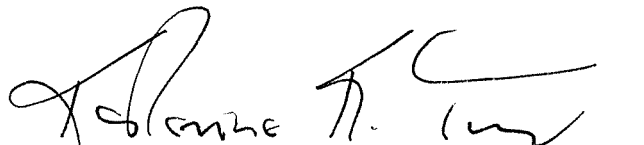
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ATTORNEYS FOR JTB REAL ESTATE, LLC

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this the 28th day of January, 2010, the original and ten (10) copies of the foregoing were mailed to the Commission for filing, and a copy was sent by first-class U.S. mail to:

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