

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THEO HAVUS GAMMEL	)	
	)	
COMPLAINANT	)	CASE NO. 2017-00082
	)	
V.	)	
	)	
JONATHAN CREEK WATER DISTRICT	)	
	)	
DEFENDANT	)	

ORDER

On February 15, 2017, Theo Havus Gammel filed a formal Complaint against Jonathan Creek Water District (“Jonathan Creek”). Mr. Gammel’s complaint states that due to an extreme leak at an unoccupied residence, he received a water bill of almost \$906 for usage in December 2016. He then appeared before the Jonathan Creek Board of Commissioners (“Board”) on January 24, 2017, and requested that his bill be adjusted in accordance with Jonathan Creek’s Leak Adjustments tariff. The complaint further states that the Board refused to apply the Leak Adjustments tariff, but they did offer him a Time Payment Plan Agreement whereby he could pay the amount due under his December 2016 bill in 12 equal installments with no interest or penalties.

By Order dated February 24, 2017, the Commission directed Jonathan Creek to satisfy the matters complained of or file a written answer to the complaint. Jonathan Creek filed an Answer on March 6, 2017. Jonathan Creek states that on or about January 4, 2017, a meter reading was taken for an account in Mr. Gammel’s name and, due to the

unusually high consumption, he was notified that day of a suspected leak on his side of the meter. Mr. Gammel then sent Jonathan Creek a letter, dated January 24, 2017, in which he acknowledged that there had been an undiscovered water leak and that the meter had been turned off, and he requested that his bill be adjusted to reflect the actual cost of water produced. At a meeting of the Board of Commissioners held on the evening of January 24, 2017, Mr. Gammel's request for a bill adjustment was denied as untimely, but he was offered a plan for payment of the bill in full over 12 months with no interest or penalties.<sup>1</sup> Jonathan Creek stated that a bill adjustment was denied because its tariff requires customers to repair a leak within ten days and to provide notice of the repairs to Jonathan Creek, but Mr. Gammel failed to timely have the leak repaired and provide the necessary notice to Jonathan Creek. Finally, Jonathan Creek states that although its Leak Adjustments tariff was filed with the Commission and was effective June 19, 2002, the Board had adopted a policy on March 25, 2003, to stop making leak adjustments and customers had been given notice of the new policy by newspaper notice.<sup>2</sup>

On May 11, 2017, the Commission entered an Order providing Mr. Gammel 14 days to file any additional information for consideration in support of his complaint and stating that upon expiration of that period of time, this case would stand submitted for a decision based on the record. Mr. Gammel then filed a Response on May 23, 2017. He stated that the water leak occurred in a cabin that has been unoccupied for almost six years, with water service turned off for most of that time, but that in the summer of 2016,

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<sup>1</sup> A copy of the offered time payment plan was attached to the Answer as Exhibit 6.

<sup>2</sup> A copy of the newspaper notice of the elimination of leak adjustments was attached to the Answer as Exhibit 9, but Jonathan Creek did not make a tariff filing to withdraw its Leak Adjustments tariff until March 1, 2017, with an effective date of April 1, 2017.

a contractor turned the meter on and did not turn it off. Due to freezing temperatures in December 2016, several water lines burst inside the cabin, but the leak was not discovered until January 4, 2017. Mr. Gammel stated that since the cabin was still unoccupied and the water meter was turned off, there was no urgency in having the water lines repaired, but that he will now have all of the water lines in the cabin replaced.

Based on a review of the complaint and being otherwise sufficiently advised, the Commission finds that the record is complete and, pursuant to KRS 278.260(2), a hearing is not necessary in the public interest or for the protection of substantial rights. The Commission begins its analysis by noting that KRS 278.160 provides, in pertinent part, that:

- 1) Under rules prescribed by the commission, each utility shall file with the commission, within such time and in such form as the commission designates, schedules showing all rates and conditions for service established by it and collected or enforced. The utility shall keep copies of its schedules open to public inspection under such rules as the commission prescribes.
- 2) No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.

While the Commission has promulgated regulation 807 KAR 5:011 that specifies the content and form of tariffs for all utilities, and regulation 807 KAR 5:066 that establishes standards and requirements for service by water utilities, there is no provision in Commission statutes or regulations that requires a water utility to adopt a leak-adjustment policy. The adoption of such a policy is left to the discretion of each water utility. Jonathan Creek did adopt such a policy and filed with the Commission a tariff,

designated First Revised Sheet No. 38, which is titled "Leak Adjustments" and was effective June 19, 2002.

Jonathan Creek's Leak Adjustment tariff sets forth certain requirements that must be met for a customer to be eligible for a bill adjustment due to a water leak. One of the tariff requirements is as follows:

5. When a leak is found to be on the customer's side the District will notify the customer that a leak has been found. The customer then has ten (10) days to present to the District proof that the leak has been fixed or the customer will not be entitled to a leak adjustment and will pay the full amount of the bill.

Here, Jonathan Creek read Mr. Gammel's meter on January 4, 2017, and due to extremely high usage, turned off his meter and notified him that same day. Mr. Gammel then requested, by letter dated January 24, 2017, that Jonathan Creek provide a bill adjustment due to an undiscovered water leak. Mr. Gammel's request for a leak adjustment was denied by the Jonathan Creek Board at a meeting on the evening of January 24, 2017. The minutes of that meeting indicate that Mr. Gammel was present at the meeting and that his request for a leak adjustment was denied with a notation that the leak was still not repaired.<sup>3</sup>

Jonathan Creek's tariff sets forth the terms and conditions under which a leak adjustment may be granted to a customer. That tariff explicitly provides that eligibility for a leak adjustment is conditioned upon the customer's fixing the leak within ten days of being notified of the leak by Jonathan Creek. As of the January 24, 2017 Board meeting, 20 days had passed since Mr. Gammel had been notified of a water leak and the leak

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<sup>3</sup> A copy of the minutes of the January 24, 2017 board meeting was attached to the Answer as Exhibit 4.

had not been fixed. In fact, Mr. Gammel's Response, dated May 18, 2017, acknowledges that after the passage of over four months the leaks had still not been fixed but that repairs were scheduled to be made the following week. These facts clearly show that Mr. Gammel is not eligible for an adjustment of his water bill under a tariff that requires the leak to be fixed within ten days of being notified of the leak by Jonathan Creek.


IT IS THEREFORE ORDERED that:

1. Mr. Gammel's complaint against Jonathan Creek challenging the denial of a leak adjustment is dismissed with prejudice.
2. This case is closed and removed from the Commission's docket.

By the Commission



ATTEST:

  
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Acting Executive Director

Case No. 2017-00082

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