

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

BENT TREE CONDOMINIUM ASSOCIATION)
COMPLAINANT)

V.)

KENTUCKY-AMERICAN WATER COMPANY)
DEFENDANT)

CASE NO. 2019-00133

BENT TREE CONDOMINIUM ASSOCIATION'S RESPONSE TO KENTUCKY-AMERICAN WATER COMPANY'S MOTION TO DISMISS

Bent Tree Condominium Association ("Bent Tree" or "Complainant"), pursuant to 807 KAR 5:001, Section 5(2), files this response to Kentucky-American's motion to dismiss Bent Tree's complaint¹. As grounds for its response, Bent Tree has filed a prima facie case. Questions remain regarding material facts and issues thus warranting review of the matter by the Commission. Bent Tree states with more particularity the following grounds for the denial of Defendants motion to dismiss below.

¹ This Response is limited to the Defendant's Answer and Motion to Dismiss, which relates to the Complaint filed on May 6, 2019 and not the November 9, 2018 Complaint filed by Bent Tree. (See Answer and Motion to Dismiss, footnote 1.) If the Commission determines that Defendant has erred by not responding to the November 9, 2018 Complaint, Complainant reserves the right to respond to any subsequent pleading by the Defendant. Moreover, Complainant does not waive its position that the November 9, 2018 filing should be considered in this matter because it was filed based, at least in part, on instructions from Commission staff on how the Complainant could dispute its bill.

Defendant's Answer to the Complaint Begs the Question that a Motion to Dismiss Should Be Denied

Bent Tree has alleged sufficient grounds to satisfy its burden of asserting a prima facie case and to proceed with a hearing on the merits of the matter. The Defendant has filed an answer in which it admits that "Bent Tree's water usage was above normal for time periods in 2017 and 2018."² This admission goes to the heart of the matter at hand; to wit, there has been above normal usage and the question is whether the meter(s) have read the consumption accurately. Indeed, Kentucky-American denies the remaining portion of the paragraph in the Complaint which reads:

"[the consumption and billings] returned to historical levels. This assertion is based on actual monthly billings and a Kentucky-American report."

Kentucky-American concedes the dispute exists yet attempts to exonerate itself of any unfair, unjust, or unreasonable business practices by merely asserting the meters are accurate because the company, and the company alone, tested the meter(s). However, the question remains as to how or why the usage returned to normal levels.

The Defendant's answers to the remaining paragraphs of the complaint highlight the confusion the Claimants have faced throughout this lengthy dispute. For example, Kentucky-American denies it informed Complainant that the alleged leak was at the Redding Road location and not the correct Kirklevington location,³ and that the leak

² Answer at paragraph 13.

³ Answer at paragraph 17.

was intermittent.⁴ In addition, Kentucky-American denies Bent Tree has experienced long delays⁵ in addressing this dispute even though the Defendant admits Bent Tree began contacting the Defendant in October 2017.⁶

Kentucky-American has tacitly admitted a prima facie case exists as it relates to unfair, unjust, and unreasonable business practices given the questionable accuracy of the meters leading to over-billing and the lengthy delays in resolving this matter (including misidentifying the meter). Hence, its motion to dismiss should be denied.

Defendant's Motion to Dismiss Should be Denied Because it is Based on Misguided and Irrelevant Case Law

Defendant cites to *Susan Sprangler and Mark Lewis Farman v. Kentucky-American Water Company*, PSC Case No. 99-109, as somehow being relevant to this matter. However, in *Sprangler*, the Complainants did not contest the accuracy of the meter, unlike that which Bent Tree has done for well over a year. Accordingly, the case is of no consequence to the instant matter.

Defendant's reliance on *Robert Young Family v. Southeastern Water Association*, PSC Case No. 2006-00212, is misguided. In *Robert Young*, the Commission had propounded a data request and developed the record, at least in part, to review the Complainant's prior usage to compare it to **one** month's contested bill. Moreover, in *Robert Young*, the Defendant tested the meter in the presence of the Complainant, unlike in the instant

⁴ Id.

⁵ Answer at paragraph 24.

⁶ Answer at paragraph 14.

matter. Bent Tree contests, and has done so for well over a year, the billed water consumption for one location where multiple meters have been placed into service. There is no record in this case of the Complainant's purported usage, the number of meters at two locations and the accuracy of those meters by an independent party, or at least the testing of same in the presence of the Complainant. Simply stated, the Commission should not rely on *Robert Young* because the record has not been developed to justify a dismissal of the case.

Defendant mistakenly relies on *Moore's Chapel A.M.E Church v. Water Service Corporation of Kentucky*, PSC Case No. 2011-00414, as dispositive of the matter at hand. *Moore's Chapel* is distinguishable in many ways. There was but one meter in question; and, **it had been tested by both a third party and the Commission⁷ for accuracy.** There is no evidence in *Moore's Chapel* on any independent, due diligence exercised by the

⁷ Under 807 KAR 5:006, Section 19(2), the Defendant must adhere to the following:

- (2) After having first obtained a test from the utility, a customer of the utility may request a meter test by the commission upon written application.
 - (a) The request shall not be made more frequently on one (1) meter than once each twelve (12) months.
 - (b) Upon request, personnel from the commission's Meter Standards Laboratory shall pick up the meter from the utility and maintain the meter for a minimum of six (6) months from the date the customer is notified of the finding of the investigation and the time frame the meter will be secured by the commission's Meter Standards Laboratory or if the customer has filed a formal complaint pursuant to KRS 278.260, the meter shall be maintained until the proceeding is resolved.
(Emphasis added.)

On October 12, 2018, Bent Tree emailed the Commission a complaint wherein Bent Tree requested the Commission test the meters. By Commission email dated October 24, 2018, the Complainant was advised that "having the Commission test your meter is the only way to dispute your bill at this point" and that the request had to be submitted within two weeks. By email dated November 1, 2018 the Complainant filed a formal complaint. However, on November 8, 2018, Bent Tree was informed telephonically that the formal complaint had to be mailed, which was done via certified mail that day. The complaint, dated November 1, 2018, was received by the Commission on November 9, 2018.

Complainant in an attempt to determine whether there was a leak. In addition, the Complainant in *Moore's Chapel* neglected to respond to a Commission order wherein the Complainant was directed to advise the Commission on how it wished to proceed with the case after the accuracy of the meter had purportedly been verified. In the instant matter, Bent Tree has meters at two separate locations, with at least the Kirklevington location having experienced the placement of several meters. The meters' accuracy have not been verified by any entity aside from Kentucky-American. Bent Tree engaged an outside, impartial expert to locate a leak, which proved unsuccessful. Importantly, Bent Tree has attempted to resolve this dispute at every turn of events for well over a year.

In sum, the cases upon which the Defendant relies are irrelevant, at best, and dilatory at worst. Bent Tree has provided the basis for a prima facie case and should be afforded a hearing in this matter.

WHEREFORE, Bent Tree respectfully requests that the Commission deny the Defendant' motion to dismiss and establish a procedural schedule and hearing in the above case.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that this RESPONSE TO MOTION TO DISMISS is a true and accurate copy of the document being filed with the Commission in paper medium; that the individual below was mailed a true and accurate copy of same; and that an original and six copies of the filing in paper medium are being hand delivered to the Commission all on this 31st day of May 2019.



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