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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

PUBLIC SERVICE
COMMISSION

BENT TREE CONDOMINIUM ASSOCIATION)	
)	
COMPLAINANT)	
)	
vs.)	CASE NO. 2019-00133
)	
KENTUCKY-AMERICAN WATER COMPANY)	
)	
DEFENDANT)	

**KENTUCKY-AMERICAN WATER COMPANY'S
RESPONSE TO MOTION FOR LEAVE TO FILE
REQUESTS FOR INFORMATION**

Now comes the Defendant, Kentucky-American Water Company (“KAW”), and for its Response to Bent Tree Condominium Association’s (“Bent Tree”) Motion for Leave to File Requests for Information (“Motion”), states that further discovery in this matter is unnecessary because the Commission already has all information necessary to rule on KAW’s May 24, 2019 Motion to Dismiss. No amount or type of discovery will change the fundamental facts that: (1) water flowed through the subject meter at Bent Tree’s premises; and (2) that meter tested accurately. Therefore, as explained in KAW’s May 24, 2019 Answer and Motion to Dismiss, Bent Tree is liable to KAW for all amounts resulting from the indicated usage.¹ Thus, any further discovery would be a waste of resources.

Bent Tree’s Motion indicates that it is “incredulous” that KAW’s October 21, 2019 Response to Item 3 of Commission Staff’s First Request for Information identifies only a

¹ *Robert Young Family v. Southeastern Water Association*, PSC Case No. 2006-00212, Order of January 25, 2007; *Susan Spangler and Mark Lewis Farman v. Kentucky-American Water Company*, PSC Case No. 99-109, Order of October 7, 1999; and *Moore’s Chapel A.M.E. Church v. Water Service Corporation of Kentucky*, PSC Case No. 2011-00414, Order of September 17, 2012.

September 19, 2018 in person-meeting “to settle the billing issue” as requested in the question itself. Bent Tree’ Motion claims that other meetings took place and seeks to confirm those meetings (and other contacts and communications) in its proposed discovery.

KAW has never stated that there were not other communications, e-mails, phone calls, or in-person contacts between KAW and Bent Tree as part of KAW’s efforts to assist Bent Tree with whatever problems Bent Tree was having downstream of KAW’s meters. Indeed, in KAW’s May 24, 2019 Answer and Motion to Dismiss,² KAW specifically agreed with numerous statements made in Bent Tree’s May 6, 2019 Complaint about such communications and contacts. For example, KAW specifically agreed that Bent Tree contacted KAW in October or November of 2017 about elevated usage and that Bent Tree requested a meter test in November 2017.³ But those contacts and communications were not “in person meetings” to “attempt to settle the billing issue” as requested in Item 3 of Commission Staff’s First Request for Information. Those communications occurred as part of an inquiry as to why elevated usage was occurring.

While it is true that elevated usage leads to higher bills, they were not “in person meetings” to “settle the billing issue.” Plainly, as shown by KAW’s responses to each allegation of Bent Tree’s Complaint, KAW and Bent Tree had numerous communications prior to the September 19, 2018 “in-person meeting” that, at least in KAW’s view, were part of the parties’ exploration of elevated usage. For example, KAW has already stated in the record of this case that it, without *any* obligation to do so, attended a March 9, 2018 meeting at Bent Tree to perform listening tests in an attempt to assist Bent Tree with identifying a problem it might be

² Bent Tree responded to KAW’s Answer and Motion to Dismiss on May 31, 2019.

³ See Paragraphs 14 and 15 of KAW’s May 24, 2019 Answer and Motion to Dismiss.

having downstream from KAW's meters.⁴ But, again, that was part of an effort to explore the elevated usage – not an “attempt to settle the billing dispute.” Thus, if Bent Tree's Motion is some sort of allegation that KAW's October 21, 2019 discovery responses are inaccurate or misleading, KAW disputes that vigorously. Both KAW's October 21, 2019 responses and its responses to the allegations of other contacts and communications between Bent Tree and KAW as described in KAW's May 24, 2019 Answer are accurate.

As stated above, Bent Tree's proposed discovery (some of which seeks to “confirm” contacts and communications that KAW has *already* confirmed as described above) cannot change the only facts necessary to decide this case. Those facts are that an accurate meter⁵ measured a certain amount of water passing through that meter. Based on those facts alone, KAW's Motion to Dismiss should be granted. While it is true that there were many contacts and communications between Bent Tree and KAW as KAW tried to assist Bent Tree with why elevated usage was occurring, Bent Tree must pay for water passing through an accurate meter. Any number of possibilities exist for *why* there was elevated usage. And those possibilities are multiplied by the fact that, according to Bent Tree, it routes the water that passes through the subject KAW meter to some 28 individual condominiums downstream from that meter.⁶ But at bottom, the *reason* for the elevated usage is distinct from *whether* Bent Tree must pay for that accurately measured usage. Once KAW determined that the measured usage was accurate, Bent Tree must pay for that usage regardless of the reason for the usage.

For all the reasons stated above, the Commission should deny Bent Tree's Motion and move forward with dismissal of this case as requested in KAW's Motion to Dismiss.

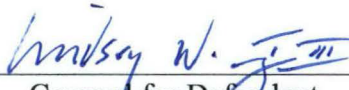
⁴ See Paragraph 17 of KAW's May 24, 2019 Answer and Motion to Dismiss.

⁵ A copy of the meter test results was attached to KAW May 24, 2019 Answer and Motion to Dismiss.

⁶ Bent Tree's May 6, 2019 Complaint, Paragraph 13.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that the original and 6 copies of the foregoing have been filed on this 12th day of November, 2019 at the Public Service Commission and that a true and accurate copy of same has been served, via U.S. Mail and electronic mail, on this 12th day of November, 2019, upon the following:

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