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January 20, 2023

Ms. Linda C. Bridwell, P.E.  
Executive Director  
Kentucky Public Service Commission  
P.O. Box 615  
Frankfort, KY 40602-0615

RECEIVED  
JAN 20 2023  
PUBLIC SERVICE  
COMMISSION

**Re: *Christopher Scott Burrell v. Farmdale Water District***  
**Case No. 2022-00324**

Dear Ms. Bridwell:

Please find enclosed Farmdale Water District's Answer to the Complaint filed by Christopher Scott Burrell pursuant to the Commission's July 10, 2023 Order in the above-mentioned case.

Should you have any questions, please contact me at your convenience.

Sincerely,

Stoll Keenon Ogden PLLC

A handwritten signature in blue ink that reads "Felisa S. Moore".

Felisa S. Moore

FSM  
Enclosure(s)

**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

<b>CHRISTOPHER SCOTT BURRELL</b>	)	
	)	
<b>COMPLAINANT</b>	)	
	)	
<b>v.</b>	)	<b>CASE NO. 2022-00324</b>
	)	
<b>FARMDALE WATER DISTRICT</b>	)	
	)	
<b>DEFENDANT</b>	)	

**ANSWER**

Defendant Farmdale Water District (“Farmdale” or “Defendant”) for its Answer to the Complaint of Christopher Scott Burrell (“Complainant”) states:

**Answer**

In accordance with the Kentucky Public Service Commission’s Order of January 10, 2023 in the above-captioned proceeding, Farmdale for its Answer, and in response to the specific averments contained in said Complaint, states as follows:

1. Defendant admits the allegations contained in the first and second sentences of the Complaint to the extent that Farmdale installed a meter at 958 Ninevah Road for Complainant to serve a barn. During the process of installing the meter, on or about November 4, 2020, Farmdale attached a short segment of flexible

tubing on Complainant's side of the meter, but denies the remaining allegations in these sentences.

2. Defendant denies the allegations contained in the third sentence of the Complaint, and affirmatively states the short segment of flexible tubing, otherwise known as a "pigtail," installed by Defendant on Complainant's side of the meter, did not fail and was not damaged. Instead, sometime prior to June 4, 2021, the Complainant had someone who is not a licensed plumber install the service line from the meter to the barn. Following installation, the person who was backfilling the trench ran across it several times with a Bobcat (mini-excavator), forcing the service line to be pushed down in the trench ultimately causing the pigtail to be "yanked out" from the meter setter.

3. Defendant is without sufficient knowledge or information to form a belief regarding the allegations contained in the fourth sentence of the Complaint, and, therefore, denies same.

4. Defendant admits in part and denies in part the allegations contained in the fifth and sixth sentences of the Complaint. Defendant admits that it sent Complainant a bill for the water usage; however, Defendant denies it "caused" the leak, "accepted responsibility," or "repaired the joint." Defendant affirmatively states that sometime prior to June 4, 2021, the Complainant had someone who is not a licensed plumber install the service line from the meter to the barn, and following

installation, the person who was backfilling the trench ran across it several times with a Bobcat (mini-excavator) forcing the service line to be pushed down in the trench ultimately causing the pigtail to be “yanked out” from the meter setter. Further, Defendant affirmatively states that on or about June 4, 2021, when Farmdale employees discovered water running down Ninevah Road, they stopped to investigate and discovered the water was coming from the outlet (customer’s) side of the meter setter. They immediately turned off the water at the meter and notified the Complainant.

5. Defendant admits the allegations contained in the seventh sentence of the Complaint to the extent that Complainant attended a Farmdale Board Meeting on July 9, 2021, at which time Farmdale agreed to a “Leak Adjustment” equal to the average water billed in the previous three (3) months, plus the actual cost to Farmdale of the excess water, but denies the remaining allegations in this sentence. Farmdale affirmatively states that after the adjustment, Complainant’s bill was lowered to \$1,614.46.

6. Defendant denies the allegations contained in the eighth sentence of the Complaint, and affirmatively states the leak was not Farmdale’s fault, but was instead caused because the Complainant hired someone who is not a licensed plumber to install the service line from the meter to the barn, and following installation, the person who was backfilling the trench ran across it several times

with a Bobcat (mini-excavator) forcing the service line to be pushed down in the trench ultimately causing the pigtail to be “yanked out” from the meter setter.

7. Defendant states no response to the ninth sentence of the Complaint is required because Complainant is merely stating the relief he is requesting. However, to the extent a response is required, Defendant denies Complainant is entitled to have the remaining balance due, totaling \$1,614.46, be “withdrawn.”

8. Defendant denies the allegations contained in the tenth sentence of the Complaint, and affirmatively states the leak was caused because the Complainant hired someone who is not a licensed plumber to install the service line from the meter to the barn, and following installation, the person who was backfilling the trench ran across it several times with a Bobcat (mini-excavator) forcing the service line to be pushed down in the trench ultimately causing the pigtail to be “yanked out” from the meter setter.

9. Defendant denies the allegations contained in the eleventh and twelfth sentences of the Complaint, and affirmatively states the remaining balance due is \$1,614.46, and this amount reflects the water usage from the leak after “Leak Adjustment” was given to the Complainant.

10. All allegations not specifically admitted are denied.

### **First Affirmative Defense**

The Complaint fails to set forth any claim upon which relief can be granted by this Commission and, therefore, should be dismissed.

### **Second Affirmative Defense**

The Complaint fails to set forth a *prima facie* case that Farmdale has violated its tariff or any statute or Commission regulation, and the Complaint should be dismissed for that reason.

### **Third Affirmative Defense**

The meter was installed on or about November 4, 2022. No leak occurred for seven (7) months. The leak did not occur until shortly before June 4, 2022. The leak was caused by some person or persons, other than Farmdale's employees, who either tampered with the meter, the meter setter, the pigtail, or the customer's service line, which was connected to the pigtail, and caused the pigtail to be "yanked out" from the meter setter. Backfilling the trench for the Complainant's service line as described elsewhere in this Answer is the most plausible explanation for causing the leak.

### **Fourth Affirmative Defense**

Original Sheet No. 34 of Farmdale's tariff on file with the Commission provides that the "applicant/customer must furnish and 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....” Further, the tariff provides the “service line must be kept in good repair and in accordance with utility and Public Service Commission rules and regulations.” The Complaint’s requested relief is contrary to the expressed terms and conditions to which Complainant agreed to receive service because the Complainant failed to make the appropriate connection from the point of service to the point of usage.

#### **Fifth Affirmative Defense**

Original Sheet No. 37.1 of Farmdale’s tariff on file with the Commission provides that while a Farmdale “is not required to have a leak adjustment policy to adjust bills due to a water leak,” Farmdale “chooses to offer a leak adjustment” based upon the following calculation: “... (2) the customer’s average monthly usage over a three month period ... deducted ... from the total amount of water that passed through the meter.” The Complaint requests the Commission to issue an order that directly contravenes Farmdale’s unambiguous tariff because Complainant requests an already reduced bill, calculated in accordance with the tariff, to be “withdrawn” essentially leaving Complainant to pay nothing.

## Sixth Affirmative Defense

The filed rate doctrine requires that utility companies strictly adhere to their tariffs, which are on file with, and approved by, the Commission for service.<sup>1</sup> Kentucky's state and federal courts have recognized and applied this principle,<sup>2</sup> and the Commission has labeled the doctrine "the bedrock of utility rate regulation." Kentucky's treatment of the filed rate doctrine mirrors that of the United States Supreme Court, which declared that the "[t]he rights as defined by the tariff cannot be varied or enlarged by either contract or tort of the carrier."<sup>3</sup> The Complaint requests the Commission to issue an order that directly contravenes Farmdale's unambiguous tariff because Complainant requests an already reduced bill, calculated in accordance with the tariff, to be "withdrawn" essentially leaving Complainant to pay nothing.

**WHEREFORE**, Farmdale Water District requests that the Commission enter an Order dismissing the Complaint with prejudice.

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<sup>1</sup> *North Marshall Water District*, Case No. 95-107 (Ky. PSC Oct. 13, 1995) Order at 2. *See also Kentucky Power Company*, Case No. 93-380 (Ky. PSC Oct. 18, 1993) Order at 1.

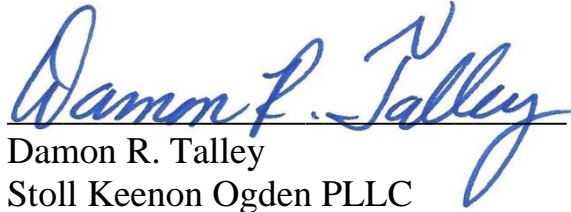
<sup>2</sup> *Commonwealth v. Anthem Ins. Cos., Inc.*, 8 S.W.3d 48, 52 (Ky. App. 1999); *Big Rivers Elec. Corp. v. Thorpe*, 921 F.Supp. 460, 464 (W.D. Ky. 1996).

<sup>3</sup> *Anthem*, 8 S.W.3d at 51, *quoting Keogh v. Chicago & Northwestern Ry.*, 260 U.S. 156, 163 (1922). *See also AT&T v. Central Office Telephone*, 524 U.S. 214 (1998).



Dated: January 20, 2023.

Respectfully submitted,



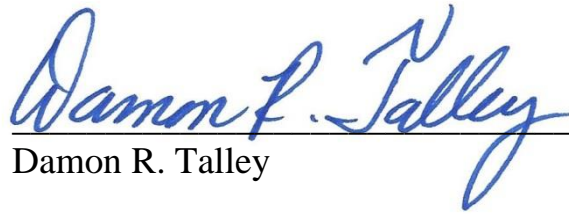
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*Counsel for Farmdale Water District*

## CERTIFICATE OF SERVICE

In accordance with the Commission's Order of July 22, 2021 in Case No. 2020-00085 (Electronic Emergency Docket Related to the Novel Coronavirus COVID-19), this is to certify that the electronic filing has been transmitted to the Commission on January 20, 2023; and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means. A copy of this Answer has been mailed to the Complainant at the address listed on the Complaint.

  
Damon R. Talley