

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

VIRGINIA B. EDWARDS)	
)	
COMPLAINANT)	
)	
V.)	CASE NO.
)	2023-00108
)	
NORTH MERCER WATER DISTRICT)	
)	
DEFENDANT)	

ORDER

On March 28, 2023, Virginia B. Edwards tendered a formal complaint with the Commission against North Mercer Water District (North Mercer District) alleging that North Mercer District allowed a broken water pipe to freely flow and made no attempt to turn the water off or notify Ms. Edwards of the broken water pipe, resulting in a \$4,335.10 bill for the water used during the incident. Ms. Edwards requests that this amount be adjusted.

LEGAL STANDARD

Pursuant to Commission regulation in 807 KAR 5:001, Section 20(4)(a), upon receipt of a formal complaint, the Commission must determine whether the complaint establishes a *prima facie* case. A complaint establishes a *prima facie* case when, on its face, it states sufficient allegations that, if uncontradicted by other evidence, would entitle the complainant to the requested relief. If a complaint fails to establish a *prima facie* case, it may be dismissed.

On September 8, 2023, the Commission ordered Ms. Edwards to file certain documents into the record within 20 days to determine if a *prima facie* case can be made, and stated that if Ms. Edwards could not make a prima facie case then the complaint would be dismissed. Commission regulation 807 KAR 5:001, Section 20, governs the filing of a formal complaint. In accordance with 807 KAR 5:001, Section 20(1)(c), a complaint must state “[f]ully, clearly, and with reasonable certainty, the act or omission” that the complaint alleges the utility failed to comply with and facts, with details, of the alleged failure. In accordance with 807 KAR 5:001, Section 20(4)(a), the Commission examines a complaint to determine whether the complaint establishes a *prima facie* case and conforms to the administrative regulation. A complaint establishes a *prima facie* case when, on its face, it states sufficient allegations that, if uncontradicted by other evidence, would entitle the complainant to the requested relief. If a complaint fails to establish a *prima facie* case or conform to the administrative regulation, 807 KAR 5:001, Section 20(4)(a)(1) provides that the complainant be notified and provided an opportunity to amend the complaint within a specified time. Additionally, 807 KAR 5:001, Section 20(4)(a)(2) provides that if the complaint is not amended within the time that the Commission grants, then the complaint shall be dismissed.

The Commission’s regulations provide that all water sold by a utility shall be upon the basis of metered volume sales.¹ Pursuant to KRS 278.160(2), no person shall receive service from a utility for compensation greater or less than that prescribed within the utility's filed schedules. KRS 278.160(2) codifies the “filed rate doctrine,” which requires strict application of tariffed rates and bars equitable defenses against a utility billing its

¹ 807 KAR 5:066, Section 13(1).

filed rates for services provided.² The Commission has consistently applied this requirement in holding that customers are responsible for paying for all water that passes through their meters.³

DISCUSSION

On September 18, 2023, Ms. Edwards filed into the record her responses to the September 8, 2023 Commission Order.⁴ She stated that this property is rental property and the building has been vacant for three years, but that Ms. Edwards thought it would be advantageous to allow the meter to be left on in case of any emergencies that required the use of water.⁵ She stated that she believed that her pipe burst due to the December 23 or December 24, 2022, deep freeze and weather conditions.⁶ Ms. Edwards goes on to state that she had been looking to do some renovations and located Ricky Cannon of Cannon Construction and that he went to the property on Tuesday, January 10, 2023, to inspect the building for improvements to be made and heard the rushing of water and then noticed a large amount of water running.⁷ Mr. Cannon immediately turned off the meter and water and notified Ms. Edwards.⁸ Ms. Edwards stated that due to other pipe

² See *Boone County Sand and Gravel v. Owen County Rural Electric Coop. Corp.*, 779 S.W.2d 224, 226 (Ky. App. 1989).

³ See Case No. 2008-00513, *Rogers v. Northeast Woodford County Water Association* (Ky. PSC Feb. 26, 2010); Case No. 2005-00035, *Lewis v. Southeastern Water Association* (Ky. PSC Mar. 13, 2007).

⁴ Virginia B. Edwards' Response to Commission Order (filed Sept. 18, 2023).

⁵ Virginia B. Edwards' Response to Commission Order at unnumbered page 1.

⁶ Virginia B. Edwards' Response to Commission Order at unnumbered page 1.

⁷ Virginia B. Edwards' Response to Commission Order at unnumbered page 1.

⁸ Virginia B. Edwards' Response to Commission Order at unnumbered page 1.

breaks around the city that it took her until January 16, 2023, to have a plumber repair the pipe.⁹

Ms. Edwards provided the minutes of North Mercer District's February 15, 2023 board meeting.¹⁰ The minutes indicate that Ms. Edwards was not happy about the amount of leak adjustment given to her by North Mercer District and requested that her bill be adjusted again to lower the amount due.¹¹ The amount of the leak adjustment given to Ms. Edwards was \$426.41. According to the minutes, it was explained to Ms. Edwards that the North Mercer District is required to follow its tariffs and to treat all the customers the same and that her bill was adjusted pursuant to North Mercer District's leak adjustment policy.¹²

On September 28, 2023, North Mercer District filed into the record its responses to the September 8, 2023 Commission Order that was served on North Mercer District.¹³ North Mercer District stated that it became aware of an issue at the vacant property located at 241 Hycliff Street on January 12, 2023, and completed the radio read of all meters in its system on January 11, 2023.¹⁴ According to North Mercer District, the information was downloaded into its billing system and meter reading reports were generated.¹⁵ North Mercer District stated that it manually goes through all meter reading

⁹ Virginia B. Edwards' Response to Commission Order at unnumbered page 1.

¹⁰ Virginia B. Edwards' Response to Commission Order, Exhibit H, page 1.

¹¹ Virginia B. Edwards' Response to Commission Order, Exhibit H, page 1.

¹² Virginia B. Edwards' Response to Commission Order, Exhibit H, page 1.

¹³ North Mercer District's Response to Commission Order (filed Sept. 28, 2023).

¹⁴ North Mercer District's Response to Commission Order at 1.

¹⁵ North Mercer District's Response to Commission Order at 1.

reports and flags all unusual usage reported.¹⁶ North Mercer District stated that a North Mercer District clerk flagged 241 Hycliff Street on January 12, 2023, attempted to notify the owner, and issued a work order to turn off the water at 241 Hycliff Street.¹⁷ Also, in its response, North Mercer District stated that North Mercer District personnel went to 241 Hycliff Street to turn off the water on January 12, 2023, and found that the water had already been turned off.¹⁸

The evidence now in the record indicates that Ms. Edwards' pipe that broke at 241 Hycliff Street was on Ms. Edwards' side of the meter and thus was her responsibility to maintain. North Mercer District has followed 807 KAR 5:006, Section 11(3) and its tariff for monitoring customer usage; that the Company will immediately investigate usage deviations brought to its attention as a result of its on-going meter reading or billing processes or customer inquiry. Furthermore, North Mercer District has followed its leak adjustment policy in its tariff to be consistent with how North Mercer District treats customers that request a leak adjustment; that an adjustment will be made to the customer's bill for the leak as outlined above with the excess water used discounted by \$1.00 per thousand gallons off the current rate. North Mercer District took the necessary steps to monitor Ms. Edwards' usage and flag it, attempted to notify Ms. Edwards, and issued a work order to immediately turn off the water.

The Commission finds that Ms. Edwards' complaint and her response to Commission Order of September 8, 2023, has not established sufficient allegations that

¹⁶ North Mercer District's Response to Commission Order at 1.

¹⁷ North Mercer District's Response to Commission Order at 1.

¹⁸ North Mercer District's Response to Commission Order at 2.

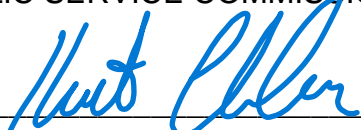
would entitle Ms. Edwards to the requested relief. Also, North Mercer District has provided evidence that is contradictory to Ms. Edwards' complaint. Ms. Edwards has not established that North Mercer District violated a statute, regulation, Commission Order, or tariff.¹⁹ If a complaint fails to establish a *prima facie* case, it may be dismissed. Therefore, the Commission finds that Virginia Edwards' complaint should be dismissed for failure to state a *prima facie* case. The Commission finds that North Mercer District is entitled to collect the filed rates.

IT IS THEREFORE ORDERED that:


1. Ms. Edwards' complaint is dismissed for failure to state a *prima facie* case.
2. The case is closed and removed from the Commission's docket.
3. A copy of this Order shall be served on Ms. Edwards by U.S. certified mail, return receipt requested at 224 W. Factory Street, Harrodsburg, Kentucky 40330.

¹⁹ See Case No. 2005-00380, *Richard Dudley Ford vs. Louisville Gas and Electric Company* (Ky. PSC Aug. 25, 2006).

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
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rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Virginia B. Edwards
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