

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Diane M.)	
Kavanagh,)	
)	
Complainant,)	
)	
v.)	Case No. 13-1512-WS-CSS
)	
Aqua Ohio, Inc.,)	
)	
Respondent.)	

OPINION AND ORDER

The Commission, considering the public hearing held on October 29, 2013, issues its opinion and order.

APPEARANCES:

Ms. Diane M. Kavanagh, 2325 Prospect-Mt. Vernon Road, Prospect, Ohio 43342, on her own behalf.

Whitt Sturtevant, LLP, by Mr. Gregory L. Williams, The KeyBank Building, 88 East Broad Street, Suite 1590, Columbus, Ohio 43215, on behalf of Aqua Ohio, Inc.

OPINION:

I. HISTORY OF THE PROCEEDING

On June 26, 2013, Ms. Diane M. Kavanagh (Complainant) filed a complaint against Aqua Ohio, Inc. (Aqua) to dispute water usage spikes in her billing. Prior to the spike in water usage, the Complainant alleged that she received a bill for \$58.65. For the 61-day billing period from January 3, 2013, to March 5, 2013, Aqua issued the Complainant a bill for \$711.48, equating to the use of 87,447 gallons of water (11,690 cubic feet). For the 58-day period from March 5, 2013, to May 2, 2013, Aqua issued a bill for \$1,205.75, equating to the used of 172,136 gallons of water (25,010 cubic feet). The Complainant ruled out leakages and suspected a faulty water meter.

Aqua filed an answer to the complaint on July 16, 2013. In its answer, Aqua noted that its field representative detected numerous leaks in the Complainant's home. Aqua also alleged that it tested its meter and found it to be accurate and working properly.

On August 1, 2013, the attorney examiner issued an entry scheduling a settlement conference for August 21, 2013. The parties were not able to resolve the dispute at the settlement conference. The attorney examiner, therefore, issued an entry on August 29, 2013, scheduling this matter for hearing to occur on October 29, 2013. The hearing took place as scheduled.

II. APPLICABLE LAW

Aqua is a public utility and a waterworks and sewage disposal company as defined by R.C. 4905.02 and 4905.03. Thus, Aqua is subject to the jurisdiction of this Commission under the authority of R.C. 4905.04 and 4905.05.

R.C. 4905.26 requires that the Commission set for hearing a complaint against a public utility whenever reasonable grounds appear that any rate charged or demanded is in any respect unjust, unreasonable, or in violation of law, or that any practice affecting or relating to any service furnished is unjust or unreasonable. The Commission also notes that the burden of proof in complaint proceedings is on the complainant. *Grossman v. Pub. Util. Comm.*, 5 Ohio St. 2d 189, 214 N.E.2d 666 (1966). Therefore, it is the responsibility of the Complainant to present evidence in support of the allegations made in a complaint.

III. SUMMARY OF THE TESTIMONY

The Complainant resides at 2325 Prospect-Mt. Vernon Road in Prospect, Ohio, and has lived there since 2009 (Tr. at 9-10). She's a residential customer of Aqua. The Complainant testified that she first became aware of a significant increase in her water usage billing in March 2013. Because the meter was locked underground, she could not check her water consumption. She claimed that her bills reflected an amount of water use that would have caused a flood or a noticeable leak. The Complainant has two toilets (Tr. at 11). She noted that her first floor toilet had a significant leak. For that reason, she had closed the valve to the downstairs toilet over a year before filing the complaint (Tr. at 8). After seeing her bill, she assumed that someone may have opened her outside spigot while she was out of the state for four days. (Tr. at 6-7.) The Complainant ruled out an open spigot as the source of the increase in usage because that would not explain the increase from \$711 for her March bill to \$1,695 for her bill in May (Tr. at 8-9). She rejects the notion that she used the amount of water stated in her bill because she lives alone and does not do laundry in her home (Tr. at 19).

Mr. Scott Ballenger appeared at the hearing and testified on behalf of Aqua. He is the Area Manager for the company's Marion and Tiffin districts. He oversees the operations in both districts, including customer service complaints. He sponsored Aqua Exhibit 1, which is his prefiled testimony. In his prefiled testimony, Mr. Ballenger asserted

that the Complainant's March 2013 and May 2013 bills were accurate because the meter was tested on two occasions and was found to be accurate. He concluded that the size of the Complainant's bills is attributable to plumbing leaks within her home. (Aqua Ex. 1 at 1.)

Mr. Ballenger noted that the Complainant had been an Ohio American Water Company (OAWC) customer since at least March 2010.¹ Upon consulting OAWC records, Mr. Ballenger discovered that the Complainant had complained of leaking water pipes in March and October 2010. According to Mr. Ballenger, in response to the March contact, an OAWC representative located a plumbing leak in the basement. After investigating the October 2010 call from the Complainant, the OAWC representative located a leak on a fitting line to an outside spigot. The representative also noted the possibility of a leaking toilet. (Aqua Ex. 1 at 2-3.)

Mr. Ballenger stated that the Complainant is a bimonthly customer; she receives a bill every other month. Mr. Ballenger testified that the Complainant's March 7, 2013, bill was \$711.48 for 11,690 cubic feet of water over 61 days. (Aqua Ex. 1 at 3; Aqua Ex. 1 Attachment A.) The Complainant's May 6, 2013, bill was \$1,695 for 23,010 cubic feet of water over 58 days (Aqua Ex. 1 at 5; Aqua Ex. 1, Attachment D). On cross examination, Mr. Ballenger added that from May 2 to May 16, 2013, a 14-day period, the Complainant used 70 cubic feet of water (Tr. at 33). The Complainant, taking into account that her water bills were typically less than \$60, asked Mr. Ballenger to explain the inconsistency in water use. Mr. Ballenger declined to explain the inconsistency. He insisted upon the accuracy of the water meter. (Tr. at 34.)

According to Mr. Ballenger, Aqua changed the Complainant's meter on May 16, 2013 (Tr. at 35). In his prefiled testimony, Mr. Ballenger states that Aqua tested the Complainant's meter on May 20, 2013, and July 29, 2013. The results of the May 20, 2013, test showed that the Complainant's meter tested 99.0 percent at low flow, 101.00 percent at medium flow, and 99.4 percent at high flow (Aqua Ex. 1 at 7; Aqua Ex. 1, Attachment E). The Complainant was not present during the test. Aqua mailed a copy of the results to the Complainant on June 3, 2013. After receiving the test results, Mr. Ballenger testified that the Complainant requested that the meter be tested in her presence. Aqua consented and repeated the test of the meter on July 29, 2013, while the Complainant was present. The meter tested at 98.0 percent at low flow, 100.5 percent at medium flow, and 99.15 percent at high flow (Aqua Ex. 1 at 7; Aqua Ex. 1, Attachment F). Mr. Ballenger states that Aqua performed the tests in accordance with the Commission's requirements and contends that the meter tested within the Commission's accuracy standards. (Aqua Ex. 1 at 8.) Mr. Ballenger had no knowledge of whether the Complainant ordered repairs after receiving the bill for \$711.48 (Tr. 36).

¹ Mr. Ballenger pointed out that Aqua acquired OAWC in 2012 (Aqua Ex. 1 at 2).

Mr. Richard Walker appeared at the hearing and testified as Aqua's second witness. He is employed by Aqua as a Field Service Representative. His responsibilities include connecting and disconnecting water utility service, setting and removing water meters, and investigating high bill complaints. He sponsored Aqua Exhibit 2, which is his prefiled testimony. Mr. Walker described his visit to the Complainant's property on May 15, 2013.

Mr. Walker noted that when he arrived at the Complainant's home the Complainant's maintenance person and assistant were working in the first-floor bathroom. He found that the Complainant's water meter was functioning properly and that it accurately reflected the meter reading on the Complainant's May 2013 bill. He further testified that, during his visit, he observed a leaking toilet, a dripping faucet, and several leaking pipes at the Complainant's home. (Aqua Ex. 2 at 1.) He also observed that the leak-indicator dial on the Complainant's meter was turning quickly. He concluded from that observation that there was a constant, relatively heavy flow of water at the premises. He explained that a leak-indicator dial helps detect leaks, but it does not disclose the location of a leak. At the hearing, Mr. Walker added that when he was at the Complainant's property he shut off the main valve where the water line comes into the house. He observed that the leak-indicator dial had stopped turning (Tr. 38). In an attempt to isolate the source of the leak, Mr. Walker stated that he asked the maintenance person to shut off the valves to both toilets. Mr. Walker noted that the leak-indicator slowed but did not stop turning. From this, Mr. Walker concluded that either the first or second floor toilet was leaking. Because the leak-indicator dial continued to move after shutting the valves to both toilets, he concluded that there was another leak. In an effort to locate the leaks, Mr. Walker checked the basement and observed that two shut-off valves were leaking around the packing nut (Tr. at 41; Aqua Ex. 2 at 2). He also observed a leaking faucet. (Aqua Ex. 2 at 2.) Mr. Walker states that he advised the Complainant of the leaks (Aqua Ex. 2 at 3).

Mr. Walker stated that the Complainant's water meter is located outside, underground in a meter pit owned by Aqua. The pit is approximately four feet deep, covered by a 12-inch diameter lid. (Tr. at 41.) The meter is not accessible by the Complainant. To use the leak indicator requires the cooperation of the field representative and the owner. In this case, Mr. Walker stated that he coordinated efforts with the Complainant's maintenance person. While observing the leak indicator, Mr. Walker instructed the maintenance person to shut off certain valves. (Tr. at 42-43.) Mr. Walker's observations led him to conclude that the Complainant has leaks from her toilets, her basement faucet, and two basement valves (Tr. at 43).

IV. DISCUSSION AND CONCLUSION

Upon thorough review of the testimony and exhibits, the Commission finds that the Complainant has not sustained the burden of proof. The Complainant filed a complaint to contest the spikes in her water bills. Her bill for the period January 3, 2013 to March 5, 2013, shows that she used 11,690 cubic feet of water. Aqua billed her \$711.48 (Aqua Ex. 1, Attachment A). For the subsequent billing period, March 5, 2013 to May 2, 2013, Aqua charged the Complainant \$1,304.45 for water usage. Adding an unpaid balance of \$355.48 and a late payment charge of \$35.57, Aqua billed the Complainant \$1,695.50 on May 6, 2013. Aqua recorded the use of 23,010 cubic feet of water for the billing period. (Aqua Ex. 1, Attachment D.)

The evidence shows that the Complainant's water consumption, before and after the spikes, did not exceed 600 cubic feet in a billing period. The Complainant's water consumption may be summarized as follows:

Billing Period	Consumption in Cubic Feet	Charge
3/6/12--5/4/12	450	\$ 47.66
5/4/12--7/6/12	510	\$ 54.28
7/6/12--9/5/12	560	\$ 57.92
9/5/12--11/2/12	490	\$ 52.82
11/2/12--1/3/13	570	\$ 58.65
1/3/13--3/5/13	11,690	\$ 711.48
3/5/13--5/2/13	23,010	\$1,304.45
5/2/13--5/16/13	70	
5/16/13--7/2/13	390	\$ 50.63

(Aqua Ex. 1, Attachment C.) The Complainant believes that the spikes in her billing are attributable to a defective water meter. When the Complainant received her bill for \$711.48, she initially thought that someone opened her outside spigot during her absence (Tr. at 6-7). She ruled out this possibility when she received the next bill which showed an even greater consumption of water during a period when the spigot was closed (Tr. at 9). She also ruled out the possibility of a toilet leak. She was aware that her basement toilet leaked. For that reason, she closed the valve to the downstairs toilet. (Tr. at 9.) The Complainant also doubted the accuracy of her bills because she believed that she would have noticed a leak of that magnitude before she received the bill (Tr. at 6).

Aqua's witness, Mr. Walker, testified that he visited the Complainant's property and observed several leaks. His investigation pointed to one of the toilets and two shut-off valves in the basement as sources of a leak. Addressing the amount of the leak, he admitted that 23,000 cubic feet is a great quantity of water, but he stated that water running constantly 24 hours a day for seven days a week could add up to a large amount

of water. He noticed that the leak-indicator dial was turning quickly, indicating a relatively heavy flow of water. He claimed that 99 percent of such leaks are from toilets (Tr. at 40). Aqua tested the meter twice and found it to be functioning within Commission standards on both occasions.

The Commission must decide whether the aberration in the Complainant's water consumption is the result of leaks within the Complainant's home or whether Aqua's meter failed to register the flow of water accurately. In a complaint case, the burden of proof is on the complainant. *Grossman*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966). Although the Complainant contends that the meter did not function properly, there is no evidence in the record to substantiate the allegation. To the contrary, the evidence that the meter was tested twice and found to be operating correctly on two occasions supports Aqua's argument that the water meter functioned properly. Instead, the evidence points to the Complainant's toilets, pipes, and faucets as the source of the leaks that resulted in an unusually high water bill. Finding that the evidence fails to support the complaint, the Commission concludes that the complaint should be dismissed. Even though the Commission has ruled that the complaint should be dismissed, the Commission recognizes that the billings for the periods January 3, 2013, to May 2, 2013, were unusually high and unexpected. Therefore, if necessary to avoid hardship or service suspension for insufficient payment, the Commission directs the parties to negotiate towards a reasonable, affordable payment arrangement.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On June 26, 2013, Diane M. Kavanagh filed a complaint against Aqua to challenge billings for water usage.
- (2) Aqua filed an answer to the complaint on July 16, 2013, in which it affirmed the accuracy of its billing.
- (3) On August 1, 2013, the attorney examiner issued an entry scheduling a settlement conference for August 21, 2013. The parties did not reach a settlement at the conference.
- (4) On August 29, 2013, the attorney examiner scheduled this matter for hearing to occur on October 29, 2013. The hearing took place as scheduled.
- (5) Aqua is a public utility and a waterworks and sewage disposal system company as defined by R.C. 4905.02 and 4905.03. Thus, Aqua is subject to the jurisdiction of this Commission under the authority of R.C. 4905.04 and 4905.05.

- (6) The complaint is properly before the Commission pursuant to the provisions of R.C. 4905.22 and 4905.26.
- (7) In a complaint case, the burden of proof is on the complainant. *Grossman*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).
- (8) The Complainant has failed to carry the burden of proof that Aqua overcharged her for water service.

It is, therefore,

ORDERED, That, in accordance with the findings and conclusions in this Opinion and Order, the complaint be dismissed. It is, further,

ORDERED, That a copy of this Opinion and Order be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Lynn Slaby

M. Beth Trombold

Asim Z. Haque

LDJ/vrm

Entered in the Journal

JAN 29 2014

Barcy F. McNeal

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Secretary