

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

LARRY RAYMOND BAILEY)	
)	
COMPLAINANT)	
)	CASE NO.
V.)	2021-00307
)	
WEST LAUREL WATER ASSOCIATION, INC.)	
)	
DEFENDANT)	

ORDER

On November 23, 2021, Larry Raymond Bailey (Mr. Bailey) filed a motion requesting that the Commission reconsider the November 17, 2021 Order dismissing Mr. Bailey’s complaint against West Laurel Water Association, Inc. (West Laurel Water). Mr. Bailey sought a refund of a \$3.01 late fee imposed by West Laurel Water. The Commission had suspended late fees through December 31, 2020,¹ but did not specify a process for doing so and was therefore silent as to whether notice was required. Mr. Bailey claimed that once West Laurel Water began reimposing late fees in 2021, it was required to provide notice of the end of the suspension of late fees. The Commission dismissed the complaint, finding that Mr. Bailey did not cite any authority requiring West Laurel Water to provide such notice.²

¹ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC Sept. 21, 2020), Order at 6–7.

².Order (Ky. PSC Nov. 17, 2021) at 5.

In his motion, Mr. Bailey asserted that that the Commission's Order was in error because he cited applicable authority in his amended complaint requiring West Laurel Water to provide notice of late fee reinstatement.

LEGAL STANDARD

KRS 278.400, which establishes the standard of review for motions for rehearing, limits rehearing to new evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful.³ A Commission Order is deemed unreasonable only when "the evidence presented leaves no room for difference of opinion among reasonable minds."⁴ An order can only be unlawful if it violates a state or federal statute or constitutional provision.⁵

By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

ARGUMENT

Mr. Bailey claimed that the Commission's Order was in error because he cited applicable authority in his amended complaint requiring West Laurel Water to provide

³ KRS 278.400; KRS 278.430.

⁴ *Energy Regulatory Comm'n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

⁵ *Public Service Comm'n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm'n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

notice of late fee reinstatement. He referred to 807 KAR 5:006 Section 5(1)(b) and Section 7(1)(a)(9) as requiring such notice.⁶ Mr. Bailey did not seek introduction of any new evidence.

Under 807 KAR 5:006 Section 5 (1)(b), “A utility shall inform its customers of a change made or proposed in the character of its service that might affect the efficiency, safety, or continuity of operation.” Bills must clearly show “[a]djustments, if applicable” under 807 KAR 5:006 Section 7(1)(a)(9).

DISCUSSION AND FINDINGS

Based upon the motion and case record, and being otherwise sufficiently advised, the Commission finds that Mr. Bailey failed to meet his burden of proof that the November 17, 2021 Order contained a material error or omission of fact or law, and thus rehearing is denied.

Mr. Bailey seeks to relitigate the issue of whether his cited authority required West Laurel Water to provide notice of reimposition of late fees after the Commission’s suspension order lapsed. The Commission found that the regulations cited by Mr. Bailey were not applicable authority requiring notice. Reinstatement of late fees is not a change that “might affect the efficiency, safety, or continuity of operation” of the service triggering 807 KAR 5:006 Section 5(1)(b). Also, the late fee adjustment was listed on Mr. Bailey’s bill⁷ as required by 807 KAR 5:006 Section 7(1)(a)(9). No material error or omission has been made justifying reconsideration under KRS 278.400, nor are the Commission’s findings unreasonable or unlawful.

⁶ Amended Complaint (filed Sept. 9, 2021) at 4.

⁷ West Laurel Water’s Answer to Complaint (filed Aug. 27, 2021), Exhibit 6.

IT IS THEREFORE ORDERED that:

1. Larry Raymond Bailey's motion for reconsideration is denied.
2. This matter is closed and removed from the Commission's docket.

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By the Commission



ATTEST:


Executive Director

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