

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 April 19, 2021, Larry Raymond Bailey filed a formal complaint against West Laurel Water Association, Inc. (West Laurel Water) requesting a refund of late fees and a further suspension of late fees and shutoffs for both himself and any other affected customers.¹ On September 23, 2021, Mr. Bailey amended his complaint² to limit the relief he sought to a refund of only the late fees assessed to him. He alleges that late fees were improperly assessed because West Laurel Water did not provide him notice when previously suspended late fees were reinstated.

On September 23, 2021, West Laurel Water filed a motion to dismiss this matter. As its basis for this motion, West Laurel Water stated that it has satisfied the relief sought by Mr. Bailey, which according to his amended complaint was a refund of a \$3.01 late fee

¹ Complaint at 2.

² Larry Raymond Bailey Response to Commission Staff First Request for Information at 6.

charged by West Laurel Water.³ A copy of a check in that amount, issued to Mr. Bailey, was submitted by West Laurel Water.⁴ On October 4, 2021, the Commission ordered Mr. Bailey to file a response stating whether West Laurel Water refunded the \$3.01 late fee. Mr. Bailey filed an addendum on the same day that Order was entered, stating that he had not received a check but that he planned to refuse acceptance of the refund check because “it could be grounds for West Laurel to claim a settlement was made.”⁵

LEGAL STANDARD

Pursuant to 807 KAR 5:006(9)(3)(h), a utility may assess a late fee consistent with additional provisions of Section 9. This includes the requirement that the late charge be included in the utility’s tariff.⁶ West Laurel Water submitted a copy of the applicable tariff, which includes the 10 percent late fee charge assessed on Mr. Bailey’s water bill.⁷ The Complainant bears the burden to prove that a utility has acted improperly.⁸

BACKGROUND

West Laurel Water ceased assessment of late fees and disconnections due to nonpayment pursuant to Commission Order entered on March 16, 2020.⁹ West Laurel Water did not change the late fee language in its bills when the Order went into effect due

³ *Id.* at 5.

⁴ West Laurel Water’s Motion to Dismiss, Exhibit at 1.

⁵ Complainant’s Addendum to Reply to West Laurel Water’s Response to Complainant’s Reply to West Laurel Water’s Motion to Dismiss (filed Oct. 4, 2021) (Addendum) at 2.

⁶ 807 KAR 5:006(9)(2).

⁷ West Laurel Water’s Answer to Complaint (filed Aug. 27, 2021), Exhibit 3, Tariff at unnumbered page 6.

⁸ *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46, 50 (Ky. App. 1980).

⁹ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC Mar. 16, 2020), Order at 8.

to cost, as its bills are preprinted through a third party.¹⁰ When the Commission ended the moratorium on late fees effective after December 31, 2020, it did not order utilities to provide notice of the reinstatement of late fees.¹¹ West Laurel Water began reimposing late fees in April 2021 after the late fee suspension period ended. West Laurel did not notify its customers of this change.¹²

In his formal complaint filed with the Commission on April 19, 2021, Mr. Bailey alleged that West Laurel Water improperly charged him a \$3.01 late fee on his water bill he received in April 2021.¹³ He further alleged that pursuant to the Order suspending utility late fees and service disconnections, late fees could not be reimposed until West Laurel Water provided notice that said Order was rescinded.¹⁴ Mr. Bailey's initial complaint requested a refund of late fees and a further suspension of late fees and shutoffs to both himself and any other affected customers.¹⁵ By Order entered August 18, 2021, the Commission determined that Mr. Bailey could not assert the interests of any other customers as this would constitute the unlicensed practice of law.¹⁶ However, the Commission also ordered West Laurel Water to satisfy or answer Mr. Bailey's allegation

¹⁰ West Laurel Water's Response to Commission Staff's First Request for Information (filed Sept 21, 2021) (West Laurel Water's Response to Staff's First Request) at 1, Response No. 1.

¹¹ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC Sept. 21, 2020), Order at 6–7.

¹² West Laurel Water's Response to Staff's First Request at 1, Response No. 3.

¹³ Complaint at 2.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Order (Ky. PSC Aug. 18, 2021) at 3.

that he was incorrectly charged a late fee.¹⁷ Mr. Bailey subsequently filed an amended complaint on September 23, 2021, specifically excluding all claims except for recovery of his own late fee.¹⁸ In response, West Laurel Water issued a check to Mr. Bailey in the sum of \$3.01 in satisfaction of the requested refund and filed a motion to dismiss on the grounds that Mr. Bailey's claim had been satisfied.¹⁹ Mr. Bailey responded that his amended complaint should not be dismissed because—regardless of the status of the refund—the Commission should determine whether West Laurel Water's late fee notice practices were proper because a similar order might be issued in the near future.²⁰ West Laurel Water replied that subsequent limits imposed by the legislature on the Governor's ability to issue emergency orders, such as the Order prompting the Commission's suspension of utility late fees and disconnections, made such an order unlikely to recur.²¹ The Commission required Mr. Bailey to file a response stating whether he had received the refund check.²² That same day, Mr. Bailey responded as follows:

As of now I have not received the check. However, at this time I plan to refuse acceptance the check pending further proceedings because I believe it could be grounds for West Laurel to claim a settlement was made.²³

¹⁷ *Id.*

¹⁸ Larry Raymond Bailey Response to Commission Staff First Request for Information at 1, 5.

¹⁹ West Laurel Water's Motion to Dismiss at 1.

²⁰ Motion to Deny Defendant's Motion to Dismiss at 3.

²¹ West Laurel Water's Response to Complainant's Motion to Deny Defendant's Motion to Dismiss, citing *Cameron v. Beshear*, 2021 WL 3730708 (Ky. 2021).

²² Order (Ky. PSC Oct. 4, 2021) at 2.

²³ Addendum at 2.

FINDINGS

As Complainant, Mr. Bailey bears the burden to prove that a utility has acted improperly.²⁴ His assertion is that in the absence of instructions regarding notice of the termination of late fee suspensions, utilities should be required to provide notice of the reinstatement of late fees. However, Mr. Bailey does not cite any specific tariff, statute, regulation, order, or other authority requiring West Laurel Water to provide such notice.

Having reviewed the record and being otherwise advised, the Commission grants West Laurel Water's motion to dismiss because Mr. Bailey failed to meet his burden to establish a prima facie case that West Laurel Water failed comply with 807 KAR 5:006(9)(3)(h) regarding its imposition of late fees and 5:006(9)(2) regarding inclusion of late fees set out in its tariff. Mr. Bailey has rejected satisfaction of his claim by the utility, and refund of the late fee is the only claim properly before the Commission.

Mr. Bailey's stated refusal to accept a sum certain requested as his sole relief in his amended complaint is also determinative. West Laurel Water has satisfied Mr. Bailey's sole claim in his amended complaint. No other claims for relief are properly before the Commission.

For all these reasons, the Commission finds that the complainant is not entitled to any further relief and his complaint should be dismissed.

IT IS THEREFORE ORDERED that:

1. Complainant's complaint and amended complaint against West Laurel Water Association, Inc. are dismissed.
2. This case is closed and removed from the Commission's docket.

²⁴ *Energy Regulatory Comm'n v. Kentucky Power Co.*, 605 S.W.2d 46, 50 (Ky. App. 1980).

By the Commission

ENTERED
NOV 17 2021 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2021-00307

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