

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of:

JEFFREY CHARLES QUARLES)

COMPLAINANT)

VS.)

PEAKS MILL WATER DISTRICT)

DEFENDANT)

CASE NO. 2005-00437

**JOINT MOTION FOR HEARING,
RECONSIDERATION AND SUBSTITUTION OF PARTY**

Come now the Complainant, Jeffrey Charles Quarles and Lennie and Vicki House, as Complainant's Successor-in-interest, by and through counsel, and pursuant to KRS 278.400 for their Joint Motion for Hearing, Reconsideration and Substitution of Party state as follows :

On or about October 25, 2005, the Complainant filed a complaint against the Defendant because it arbitrarily denied him water service across his driveway into Owen County, Kentucky. Peaks Mill subsequently filed a Motion to Dismiss this Complaint. The Public Service Commission (hereinafter, "PSC") denied a portion of Peak's Mill's Motion to Dismiss acknowledging that it was currently servicing properties in Owen County. Thereafter, Peaks Mill filed an appeal of this decision to the Circuit Court of Franklin County, Kentucky.

During this time, the PSC had an evidentiary hearing on this matter on April 5,

2006. Each party was to submit briefs with the PSC after the hearing. The Complainant submitted his brief on April 28, 2006. In that Brief, he informed the PSC that he had sold the property in question on April 24, 2006. The PSC then issued an Order on May 22, 2006 stating that Complainant no longer had standing to pursue this matter due to the sale of the property.

Complainant now moves this Commission to reconsider the dismissal of this matter and allow Lennie and Vicki House to be substituted as Complainants in this action as successors-in-interest to Jeffrey Charles Quarles for the reasons set forth below.

**I. THE ISSUES FACING THE HOUSES ARE IDENTICAL
TO THOSE BEFORE THE COMMISSION**

Mr. Quarles' Complaint to the PSC centers around Peaks Mill Water District's refusal to provide service to the piece of property purchased by the Houses. The Houses wish to pursue this action against Peak's Mill to require them to provide water service to this property. The arguments made by Complainant in this case are the same arguments that the Houses will have. Therefore, the change in ownership will in no way affect these arguments because they are not dependant upon who the owner of the property is.

Specifically, Peaks Mill was and is actively servicing water customers in Owen County. In addition, there seems to be some evidence that they are actively pursuing other customers to service in Owen County. More importantly, they currently service this property by a line that crosses the county line into Owen County. This set of facts

will not be compromised by the change in ownership.

II. BOTH PARTIES WILL BENEFIT BY THE ALLOWANCE OF THE SUBSTITUTION OF PARTIES

The Houses and Mr. Quarles, as stated above, have identical interests in seeing this Claim through the PSC and, if need be, the Franklin County Circuit Court. If this case is dismissed, it will have been pending for approximately seven (7) months. During that time each party has spent time and money drafting pleadings and responses to pleadings, appearing before the PSC and arguing their respective positions. They have taken statements from witnesses, given testimony and researched the law. If this case is dismissed, the Houses will have no choice but to refile the exact same action. It will also require the Peaks Mill Water District to refile its response, possibly its Motion for Summary Judgment and conceptually its Circuit Court Appeal.

In essence, it will cost both parties thousands of dollars and the better part of a year to get to the point which has currently been reached in this case if it is dismissed. Such a result is unfair and inequitable to both parties. On the other hand, there is no harm to Peak's Mill by allowing the substitution of the Houses for the Complainant in this action. This is because the issues under consideration by the PSC remain the same and the Houses are not trying to introduce any new proof or legal theory to which Peaks Mill will be required to respond.

III. THE DOCTRINE OF JUDICIAL ECONOMY DEMANDS THE ALLOWANCE OF THE SUBSTITUTION OF PARTIES AND ADJUDICATION OF THIS MATTER

The Complainant has discussed above the cost in time and money to the parties

if the process of filing a new claim is required for the Houses. However, the PSC and other potential complainants will also be affected by this outcome. If the Houses are made to reapply, additional docket time for the PSC will be consumed by the same issues it already has before it to be decided.

This is akin to the Civil Rule regarding Consolidation of Cases. This rule is set out in Rule 42.01. Consolidation:

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all matters in issue in the actions; it may order all the actions consolidated; and **it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.**

Ky CR 42.01 (Emphasis Added)

For the reasons set forth above, the allowance of the substitution of the Houses as the Successors-in-interest of the Complainant will avoid unnecessary cost and delay for all parties involved.

WHEREFORE, the Complainant respectfully moves for a rehearing of this matter overturning its dismissal and for the allowance of the substitution of Lennie and Vicki House as Complainants herein.

Respectfully Submitted,
BULLOCK & COFFMAN, LLP



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NOTICE

Please take notice that the forgoing motion will be brought on for hearing at the convenience of the Kentucky Public Service Commission, or as soon thereafter as counsel may be heard.

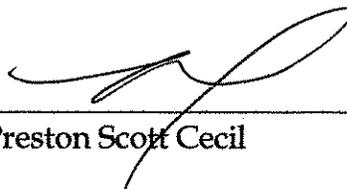
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was ~~hand delivered~~ ^{mailed} to the following this 26 day of May 2006:

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