

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION
CASE NO, 2021-00307

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PUBLIC SERVICE
COMMISSION

LARRY RAYOMND BAILEY
COMPLAINANT

V. **MOTION TO DENY DEFENDANT’S MOTION TO DISMISS**

WEST LAUREL WATER ASSOCIATION, INC.
DEFENDANT

I Come Now, requesting the Kentucky Public Service Commission (PSC) to deny West Laurel Association’s (West Laurel) motion to dismiss. I base my motion on the voluntary cessation doctrine.

HISTORY

On September 23, 2021 I filed an amended complaint. In that amended complaint I changed my request to refund late fees to all West Laurel’s customers and reconnect services to customers who were improperly disconnected, to a request to refund my late fees. In my amended complaint I discussed the responsibility of West Laurel and the PSC to apply the findings to all customers even if I do not directly request it. I discussed and cited legal authority asserting West Laurel had a legal obligation to include changes in billing practices on customers bills. I also addressed their defense of presumption that late fees would resume on April 15, 2021.

On September 23, 2021 West Laurel filed its motion to dismiss citing economic reasons. In sum they claim it is not worth the cost to defend their charge of a late fee. I object to their motion based on the voluntary cessation doctrine.

STATEMENT OF LAW

An appeal may move forward notwithstanding a defendant's cessation of the challenged action if the dismissal allows the defendant a chance to repeat the same action again in the future. *Morgan v. Getter*, 441 S.W.3d (KY. 2014), citing the U.S. Supreme Court in *U.S. v. W. T. Grant Co.*, 345 U.S. 629 (U.S. 1953). When an issue remains unanswered concerning the legality of an action, and that action should be settled as a matter of public interest, the case should not be dismissed. (*Getter Supra*).

The Kentucky Supreme Court cites two elements that determine whether a challenged action may be repeated in the future by a defendant.

(1) the challenged action must be too short in duration to be fully litigated prior to its cessation or expiration, and (2) there must be a reasonable expectation that the same complaining party will be subjected to the same action again. Philpot v. Patton, 837 S.W.2d 491 (KY. 1992), cited by *Morgan v. Getter*.

ARGUMENT

West Laurel does not challenge any of my legal assertions argued in the amended complaint. It simply cites economic reasons for dismissal. Dismissing at this point would leave those issues unresolved. Therefore, without an opinion from the PSC the issue will not be fully litigated. As I discussed in previous filings the issue at hand is unique due to a national emergency resulting in Executive Order's (EO) from the governor. Since the pandemic is at full force a very real possibility exists that another EO may be issued

suspending late fees by West Laurel. Thus, there is a high probability that I may be subjected to the same action by West Laurel in the future.

As I mentioned in my amended complaint all customers of West Laurel are affected by the matter of notification of reinstating late fees. So, there can be no doubt the subject is of public importance.

SUMMARY

The PSC should not dismiss the complaint because it has not addressed the issue which has a high probability of occurring again in the near future. The issue is a matter of public importance and should be addressed in the public interest.

REQUEST

I pray the PSC deny West Laurel's motion to dismiss the complaint and continue with the legal process.

RESPECTFULLY SUBMITTED:

Larry Bailey
181 Ben Bailey Road
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CERTIFICATE OF SERVICE

I certify that a copy of this pleading was sent on September 29, 2021 to,

The Public Service Commission
PSCED@ky.gov

And

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