

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REQUEST TO FILL A VACANCY ON THE GREEN- )  
TAYLOR WATER DISTRICT BOARD OF ) CASE NO. 2011-00026  
COMMISSIONERS )

ORDER

Taylor County Judge/Executive Eddie Rogers has advised the Commission in writing of the existence of a vacancy on Green-Taylor Water District's ("Green-Taylor District") Board of Commissioners due to the expiration of the incumbent's term, has requested that the Commission fill this vacancy, and has proposed a candidate for appointment. By this Order, we appoint Terry Mardis to fill the vacant position.

Green-Taylor District, a water district organized in 1964 pursuant to KRS Chapter 74, owns and operates facilities that distribute water for compensation to approximately 4,721 customers in Adair, Green, Metcalfe, and Taylor counties, Kentucky.<sup>1</sup> As of December 31, 2009, Green-Taylor District had total assets and other debits of \$13,662,763.<sup>2</sup> For the calendar year ending December 31, 2009, it had total operating revenues of \$1,935,988.<sup>3</sup>

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<sup>1</sup> *Annual Report of Green-Taylor Water District to the Public Service Commission of Kentucky for the Year Ended December 31, 2009 ("Annual Report")* at 4, 5 and 21.

<sup>2</sup> *Annual Report* at 7.

<sup>3</sup> *Id.* at 11.

A five-member board of commissioners administers Green-Taylor District and has the statutory responsibility to “control and manage” the water district’s affairs.<sup>4</sup> The County Judge/Executives of Green and Taylor Counties appoint the water district commissioners with the approval of the fiscal court of the appropriate county.<sup>5</sup> Pursuant to KRS 74.020(1), the terms of the members of a water district’s board of commissioners are staggered.<sup>6</sup>

The term of Green-Taylor District Commissioner Terry Mardis expired on June 30, 2010. Taylor County Judge/Executive Rogers and Taylor County Fiscal Court failed to act within 90 days to appoint and approve Mr. Mardis’s reappointment to Green-Taylor District’s Board of Commissioners. On January 21, 2011, Judge/Executive Rogers wrote to the Commission to request the reappointment of Mr. Mardis to fill the vacancy.<sup>7</sup> In his letter, County Judge/Executive Rogers enclosed a copy of the minutes of January 11, 2011 meeting of Taylor County Fiscal Court at which the Fiscal Court unanimously endorsed Mr. Mardis’ reappointment to Green-Taylor District’s Board of Commissioners.

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<sup>4</sup> KRS 74.020(1).

<sup>5</sup> KRS 74.020(1)(b). When Green-Taylor District was created, its boundaries included Green and Taylor Counties. Its boundaries were subsequently extended to portions of Metcalfe and Adair Counties. Currently, Green-Taylor District’s distribution assets are located among the four counties in the following manner: Green County – 64 percent; Taylor County – 25 percent; Metcalfe County – 10 percent; and Adair County – one percent. See Green-Taylor District’s Response to the Commission’s Order of November 23, 2010, Item 10. As less than 25 percent of Green-Taylor District’s distribution system assets are located in Metcalfe or Adair County, KRS 74.020(1)(c) does not empower the county judge/executive of either county to appoint a member to Green-Taylor’s Board of Commissioners.

<sup>6</sup> KRS 74.020(1)(a) (“Initial appointments shall be for terms of two (2), three (3), and four (4) years, as designated by the Court.”).

<sup>7</sup> Letter from Eddie Rogers, Taylor County Judge/Executive, to Jeff Derouen, Executive Director, Public Service Commission (Jan. 21, 2011).

On February 22, 2011, we initiated this proceeding to fill the existing vacancy. To ensure notice to all persons with a significant interest in this matter, the Commission ordered that Green-Taylor District, Taylor County Judge/Executive Rogers, Taylor County Fiscal Court, and Mr. Mardis be made parties to this proceeding.<sup>8</sup> We further directed Mr. Mardis to provide information regarding his personal background and afforded all parties the opportunity to nominate additional persons to fill the existing vacancies. Mr. Mardis and Green-Taylor District have responded to the Commission's directives to provide information.

Pursuant to KRS 74.020(1)(a), a county judge/executive appoints water district commissioners with the approval of the county's fiscal court. KRS 74.020(4), however, provides that the Commission shall fill a vacancy on the board of commissioners "if, within ninety (90) days following the expiration of the term, the vacancy has not been filled by the appropriate county judge/executive with approval of the fiscal court."

The Commission finds that Mr. Mardis's term as Green-Taylor District Commissioner expired on June 30, 2010 and that his position is currently vacant.<sup>9</sup> We also find that this vacancy has existed for longer than 90 days. Based upon our review of the evidence of record, we find no information to suggest that Mr. Mardis is not

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<sup>8</sup> Pursuant to KRS 74.020(1), the Taylor County Judge/Executive and Taylor County Fiscal Court are responsible for the appointment and approval of two members of Green-Taylor District. See *supra* note 5. Mr. Mardis held one of these two positions. For this reason, we made the Taylor County Judge/Executive and Taylor County Fiscal Court parties to this proceeding. As the Green County Judge/Executive and Green County Fiscal Court played no role in the appointment and approval of the vacant position, we did not make those officials parties to this proceeding.

<sup>9</sup> While the office is considered vacant, Mr. Mardis continued to serve as a member of Green-Taylor District's Board of Commissioners. Commissioners continue to serve until their successors are appointed and qualified. KRS 65.008. See also OAG 82-176 ("[A] member of the Water District Board can hold over after the expiration of his term only where there is no regularly elected and qualified successor. Where such officers hold over, their official acts are valid until their successors are appointed and qualified.")

qualified to serve in the designated position. We further find that he resides within Green-Taylor District's territory and possesses adequate education, business skills, and experience to perform the duties of water district commissioner.

The Commission takes note of the recent action of Taylor County Fiscal Court to recommend the reappointment of Mr. Mardis. While the law is clear that the Commission has the statutory duty and exclusive authority to fill the vacant position when a county judge/executive and county fiscal court fail to act within 90 days of the vacancy's creation,<sup>10</sup> we afford significant weight to the positions of local elected officials. As we noted in Case No. 2007-00493, the Commission should defer

to the local elected officials in those instances where the local appointing and approval authorities have reached agreement on a candidate. Absent unusual circumstances that raise clear concerns about an agreed candidate's qualifications, such deference is appropriate because local officials generally have a better understanding of the candidates' qualifications and of the water district's needs and because these officials are directly accountable to the water district's customers through the ballot box.<sup>11</sup>

As the local appointing and approving officials are in agreement and as the record contains no evidence to suggest that Mr. Mardis is unqualified to hold the position, we find that Mr. Mardis should be reappointed to fill the existing vacancy on Green-Taylor District's Board of Commissioners.

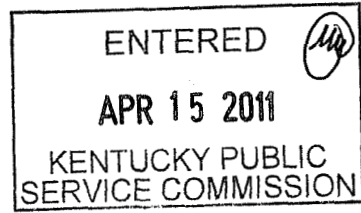
IT IS THEREFORE ORDERED that Terry Mardis of 789 Mac-Pittman Road, Campbellsville, Kentucky is appointed to fill an existing vacancy on Green-Taylor District's Board of Commissioners. His term shall expire June 30, 2014.

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<sup>10</sup> See Case No. 2007-00493, *Request for Assistance in the Appointment of Breathitt County Water District Commissioners* (Ky. PSC Mar. 20, 2008).

<sup>11</sup> *Id.* at 4-5.

By the Commission



ATTEST:

  
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Executive Director

Case No. 2011-00026

Eddie Rogers  
Taylor County Judge Executive  
Office of the Judge/Executive  
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