

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|  |   |            |
|--|---|------------|
| AN INVESTIGATION OF A POSSIBLE VACANCY | ) | CASE NO.   |
| ON THE BOARD OF COMMISSIONERS OF       | ) | 2018-00011 |
| NORTH MARSHALL WATER DISTRICT          | ) |            |

ORDER

By letter dated September 7, 2017, Bobby Gifford, North Marshall Water District Superintendent, advised the Commission that there were vacancies on the Board of Commissioners of the North Marshall Water District resulting from the expiration of two Commissioners' terms.<sup>1</sup> According to the Superintendent, the terms of the Commissioners, Billy Driskill and Kenneth Shadowen, ended on June 30, 2017, and the members of the Marshall County Fiscal Court had neither appointed new nor reappointed those Commissioners as of September 7, 2017.

KRS 74.020(4), which addresses the appointment of members to the boards of commissioners of water districts, states:

Vacancies shall be filled by the same appointing authority which is empowered to make the original appointment. Vacancies resulting from cause other than expiration of the term shall be filled for the unexpired term only. Notwithstanding KRS 67.710, a vacancy resulting from the expiration of a term or the death, resignation, or removal of the incumbent shall be filled by the Public Service Commission if, within ninety (90) days following the vacancy, the vacancy has not been filled by the appropriate county judge/executive with approval of the fiscal court.

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<sup>1</sup> A copy of the letter is attached as Appendix A.

The September 7, 2017 letter advised the Commission in writing that there were vacancies pursuant to KRS 74.020(9)(a). The September 7, 2017 letter also stated that the Marshall County Fiscal Court had neither appointed new nor reappointed current water Commissioners as of September 7, 2017. In the event of a vacancy in excess of 90 days, the Commission has the statutory duty and exclusive authority to fill the position. While a county judge/executive and a county fiscal court may reach agreement on a candidate for the vacant position, they lack authority to fill the vacancy once it has remained unfilled for more than 90 days. Any action on their part to appoint and approve a candidate after that time constitutes only a recommendation to the Commission.<sup>2</sup>

Accordingly, the Commission finds that this proceeding should be initiated to determine whether a vacancy did exist for more than 90 days on the North Marshall Water District Board of Commissioners. The Commission will make the North Marshall Water District a party to this case and request that it provide certain information, which is set forth in a data request attached hereto as Appendix B. The Commission also will request, by separate letter, that the Marshall County Clerk file copies of the meeting minutes of the Marshall County Fiscal Court appointing the Commissioners whose terms reportedly expired on June 30, 2017.

If the Commission finds that a vacancy or vacancies did exist for more than 90 days, we will then proceed to identify qualified candidates for appointment to those positions. To ensure that a wide range of candidates are considered, the Commission will permit all interested persons the opportunity to nominate candidates for the

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<sup>2</sup> See Case No. 2008-00395, *Request to Fill Existing Vacancies on the Board of Commissioners of Letcher County Water and Sewer District* (Ky. PSC Jan. 28, 2009) at 4–5.

position(s) and will then determine whether each of these candidates meets the constitutional and statutory requirements for the office of water district commissioner and, of those candidates that meet these requirements, which is best suited to sit on the North Marshall Water District Board of Commissioners. The Commission also will direct that a copy of this Order be served upon the Marshall County Judge/Executive, the Marshall County Fiscal Court, the Marshall County Attorney, and North Marshall Water District's Board of Commissioners to notify them of this proceeding.

IT IS THEREFORE ORDERED that:

1. This proceeding is initiated to determine whether a vacancy existed on the North Marshall Water District's Board of Commissioners for more than 90 days in 2017.

2. Marshall County Water District is made a party to this proceeding.

3. Any party filing documents with the Commission shall serve a copy of those documents upon all other parties.

4. a. The information requested in Appendix B to this Order is due within 14 days of entry of this Order. Responses to requests for information shall be appropriately bound, tabbed, and indexed and shall include the name of the witness responsible for responding to the questions related to the information provided, with copies to all parties of record, and the original and five copies to the Commission.

b. Each response shall be answered under oath or, for representatives of a public or private corporation or a partnership or association or a governmental agency, be accompanied by a signed certification of the preparer or the person supervising the preparation of the response on behalf of the entity that the

response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

c. A party shall make timely amendment to any prior response if it obtains information which indicates that the response was incorrect when made or, though correct when made, is now incorrect in any material respect.

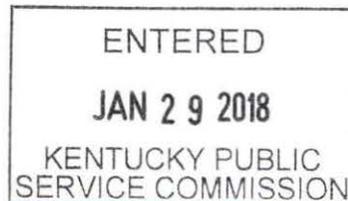
d. For any request to which a party refuses to furnish all or part of the requested information that party shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

e. A party filing a document containing personal information shall, in accordance with 807 KAR 5:001, Section 4(10), encrypt or redact the document so that personal information cannot be read.

6. Service of all documents shall be made in accordance with 807 KAR 5:001, Section 4(8).

7. The Executive Director shall serve a copy of this Order upon the Marshall County Judge/Executive, the members of the Marshall County Fiscal Court, the Marshall County Attorney, and the North Marshall District's Board of Commissioners.

By the Commission

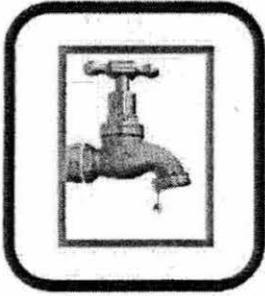


ATTEST:

  
Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2018-00011 DATED **JAN 29 2018**



# NORTH MARSHALL WATER DISTRICT

96 Carroll Road . Benton, Kentucky 42025  
Telephone (270) 527-3208 . Fax (270) 527-3039

RECEIVED

SEP 11 2017

PUBLIC SERVICE  
COMMISSION

September 7, 2017

John S. Lyons  
Acting Executive Director  
211 Sower Boulevard  
Frankfort, KY 40602-0615

Dear Mr. Lyons,

North Marshall Water District had 2 Board of Commissioners terms expire on June 30, 2017. These commissioners being Billy Driskill and Kenneth Shadowen. The Marshall County Fiscal Court to date has not appointed new or reappointed these commissioners.

Sincerely,

Bobby Gifford,  
Superintendent

## APPENDIX B

### APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2018-00011 DATED **JAN 29 2018**

1. List the name of each current North Marshall Water District Commissioner and the date on which his or her term expires.
2. Provide a map of North Marshall Water District's territory.
3. Provide the ordinances and resolutions of Marshall County Fiscal Court that establish North Marshall Water District's territorial boundaries.
4. Provide all orders of the Marshall County Judge/Executive that address the appointments to the North Marshall Water District's current Board of Commissioners.
5. Provide all orders of the Marshall County Judge/Executive that address appointments to the North Marshall Water District Board of Commissioners to replace those Commissioners whose terms allegedly expired on June 30, 2017.
6. Provide all correspondence with the Marshall County Judge/Executive regarding the expiration of the term of the Commissioners whose terms allegedly expired on June 30, 2017.

\*North Marshall Water District  
96 Carroll Road  
Benton, KY 42025

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