

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REQUEST TO FILL VACANCIES ON THE BOARD	)	
OF COMMISSIONERS OF GREEN-TAYLOR	)	CASE NO. 2010-00446
WATER DISTRICT	)	

ORDER

Outgoing Green County Judge/Executive Mary Ann Baron and incoming Green County Judge/Executive Misty N. Edwards have separately advised the Commission in writing of the existence of two vacancies on Green-Taylor Water District's ("Green-Taylor District") Board of Commissioners due to the expiration of the incumbents' terms, have requested that the Commission fill each vacancy, and have proposed candidates for appointment. By this Order, we appoint Amy Olt and Ken Ferguson to fill the vacant positions.

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 terms of Green-Taylor District Commissioners Joyce Ward and Harry Kessler expired on June 30, 2010. Green County Judge/Executive Mary Barron and Green County Fiscal Court failed to act within 90 days to appoint and approve Ms. Ward’s and Mr. Kessler’s reappointment to Green-Taylor District’s Board of Commissioners despite written requests from the water district for such action. On November 10, 2010, Judge/Executive Barron wrote to the Commission to request the reappointment of Ms. Ward and Mr. Kessler to fill the vacancies.<sup>7</sup> Shortly thereafter, Green County Judge/Executive-Elect Misty N. Edwards wrote to the Commission to request that Ms. Olt and Mr. Ferguson be appointed to fill the vacant positions.<sup>8</sup>

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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> See 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 Mary Ann Blaydes Barron, Green County Judge/Executive, to Jeff Derouen, Executive Director, Public Service Commission (Nov. 10, 2010).

<sup>8</sup> Letter from Misty N. Edwards, Green County Judge/Executive-Elect, to Public Service Commission (Nov. 12, 2010).

On November 23, 2010, we initiated this proceeding to fill the existing vacancies. To ensure notice to all persons with a significant interest in this matter, the Commission ordered that Green-Taylor District, Green County Judge/Executive Barron, Green County Judge/Executive-Elect Edwards, Green County Fiscal Court, Ms. Ward, Ms. Olt, Mr. Kessler and Mr. Ferguson be made parties to this proceeding. We further directed Ms. Ward, Ms. Olt, Mr. Kessler and Mr. Ferguson to provide information regarding their personal background and afforded all parties the opportunity to nominate additional persons to fill the existing vacancies. All persons who were nominated have responded to the Commission's directives to provide information.

On February 18, 2011, County Judge/Executive Edwards<sup>9</sup> informed the Commission that a majority of the members of Green County Fiscal Court had approved a resolution that recommended the appointment of Ms. Olt and Mr. Ferguson to serve as members of Green-Taylor District's Board of Commissioners.

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 terms of Green-Taylor District Commissioners Joyce Ward and Harry Kessler expired on June 30, 2010 and that their positions are currently

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<sup>9</sup> Judge/Executive Edwards assumed the office of Green County Judge/Executive on January 1, 2011.

vacant.<sup>10</sup> We also find that these vacancies have existed for longer than 90 days. Based upon our review of the evidence of record, we find no information to suggest that any of the candidates are unqualified to serve in the designated position. We further find that each of the candidates 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 Green County Fiscal Court to recommend the appointment of Ms. Olt and Mr. Ferguson. While the law is clear that the Commission has the statutory duty and exclusive authority to fill the vacant positions when a county judge/executive and county fiscal court fail to act within 90 days of the vacancy's creation,<sup>11</sup> we have afforded significant weight to the positions of local elected officials in the past. As we noted in Case No. 2007-00493, the Commission should defer:

[T]o 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>12</sup>

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<sup>10</sup> While the offices are considered vacant, Ms. Ward and Mr. Kessler have continued to serve as members 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.")

<sup>11</sup> See Case No. 2007-00493, *Request for Assistance in the Appointment of Breathitt County Water District Commissioners* (Ky. PSC Mar. 20, 2008).

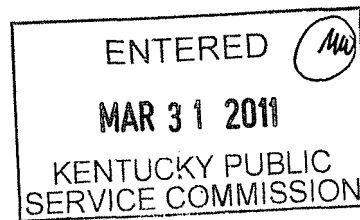
<sup>12</sup> *Id.* at 4-5.

As the local appointing and approving officials are in agreement and as the record contains no evidence to suggest that Ms. Olt and Mr. Ferguson are unqualified to hold the positions, we find that Ms. Olt and Mr. Ferguson should be appointed to fill existing vacancies on Green-Taylor District's Board of Commissioners.

IT IS THEREFORE ORDERED that:

1. Amy Olt is appointed to fill an existing vacancy on Green-Taylor District's Board of Commissioners. Her term shall expire June 30, 2014.
2. Ken Ferguson is appointed to fill an existing vacancy on Green-Taylor District's Board of Commissioners. His term shall expire June 30, 2014.

By the Commission



ATTEST:

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Executive Director

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