

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BLACK MOUNTAIN UTILITY)	
DISTRICT AND GREEN HILLS WATER DISTRICT)	CASE NO. 2012-00095
FOR MERGER PURSUANT TO KRS 74.363)	

ORDER

Black Mountain Utility District ("Black Mountain District") and Green Hills Water District ("Green Hills District") (collectively "Joint Applicants") have applied for Commission approval of their proposed merger. Having reviewed the evidence of record¹ and being otherwise sufficiently advised, the Commission finds that:

1. Black Mountain District is a water district organized pursuant to KRS Chapter 74.
2. On June 7, 1984, the Commission authorized residents of the Black Mountain area of Harlan County, Kentucky to petition Harlan County Fiscal Court for the creation of Black Mountain District.²

¹ The Joint Applicants filed their application on March 14, 2012. No person has sought to intervene in this matter. On May 10, 2012, the Commission finding that, should KRS 278.020(6) apply to the proposed merger, the time for review pursuant to that statute should be extended to 120 days. Using informal procedures, Commission Staff has obtained and placed into the record additional information regarding the proposed merger. In view of the existing record and the lack of any request from the Joint Applicants for a hearing, the Commission finds that a hearing in this matter is not necessary and the case stands ready for decision.

² Case No. 8999, *In the Matter of the Application of Residents of Harlan County, Kentucky, For a Preliminary Hearing to Determine the Need for the Formation of Black Mountain Utility District* (Ky. PSC June 7, 1984).

3. On October 11, 1984, the Harlan County Judge/Executive ordered the creation of Black Mountain District.³

4. On May 8, 1986, Harlan County Fiscal Court affirmed and ratified the creation of Black Mountain District and established its territory to the Black Mountain area of Harlan County, Kentucky.⁴

5. Black Mountain currently owns and operates water distribution facilities that serve approximately 2,672 customers in Harlan County, Kentucky.⁵ It also operates sewage collection and treatment facilities in Closplint, Kentucky that serve approximately seven customers.⁶

6. A five-member board of commissioners manages and controls Black Mountain District.⁷

7. Black Mountain District purchases its water supply from the cities of Harlan, Kentucky and Evarts, Kentucky.⁸

8. For the year ended December 31, 2010, Black Mountain District purchased 189,061,600 gallons of water and sold 137,788,184 gallons of water.⁹

³ Application at 2.

⁴ Harlan County, Kentucky, Ordinance Relating to the Ratification, Confirmation, and Approval of the Creation of, and the Present Formation of Black Mountain Utility District (May 8, 1986).

⁵ *Annual Report of Black Mountain Utility District (Water Division) to the Kentucky Public Service Commission for the Year Ended December 31, 2010* (hereinafter "*Black Mountain Annual Report*") at 5, 27.

⁶ *Annual Report of Black Mountain Utility District (Sewer Division) to the Kentucky Public Service Commission for the Year Ended December 31, 2010* at 1, 12.

⁷ Application at 4.

⁸ *Black Mountain Annual Report* at 29.

⁹ *Black Mountain Annual Report* at 30.

9. As of December 31, 2010, Black Mountain District had total assets of \$10,213,710.¹⁰

10. As of December 31, 2010, Black Mountain District owned net utility plant of \$9,603,106.¹¹

11. As of December 31, 2010, Black Mountain District reported total debt and liabilities of \$2,255,882. This amount included current and accrued liabilities of \$168,035; bonded debt of \$1,417,300; and long-term loans of \$658,351 to the Kentucky Infrastructure Authority and \$12,195 to the Bank of Harlan.¹²

12. For the year ended December 31, 2010, Black Mountain District reported total operating revenues of \$1,225,783 and total operating expenses of \$1,438,221, for a net operating loss of \$212,438.¹³

13. As of December 31, 2010, Black Mountain employed eight full-time employees and one part-time employee.¹⁴

14. Green Hills District is a water district organized pursuant to KRS Chapter 74.

15. On September 2, 1976, the Commission authorized the residents of Harlan County, Kentucky to petition for the creation of Green Hills District.¹⁵

¹⁰ *Id.* at 7.

¹¹ *Id.*

¹² *Id.* at 9 and 22-23.

¹³ *Id.* at 11.

¹⁴ *Id.* at 5.

¹⁵ Case No. 6458, *Residents of Harlan County Community of Green Hills* (Ky. PSC Sep. 2, 1976).

16. On September 19, 1977, Harlan County Court established Green Hills District and designed its territory as the portions of Harlan County north of Pine Mountain.¹⁶

17. Green Hills District currently owns and operates water distribution facilities that serve approximately 507 customers in Harlan and Leslie Counties, Kentucky.¹⁷

18. A three-member board of commissioners manages and controls Green Hills District.¹⁸

19. Green Hills District purchases its water supply from the city of Pineville, Kentucky.¹⁹

20. For the year ended December 31, 2010, Green Hills District purchased 33,513,000 gallons of water and sold 22,367,000 gallons of water.²⁰

21. As of December 31, 2010, Green Hills District had total assets of \$2,731,293.²¹

22. As of December 31, 2010, Green Hills District owned net utility plant of \$2,677,208.²²

¹⁶ Harlan County, Kentucky, Order Creating Green Hills Water District (Sept. 17, 1977).

¹⁷ *Annual Report of Green Hills Water District to the Kentucky Public Service Commission for the Year Ended December 31, 2010* (hereinafter "*Green Hills Annual Report*") at 5, 27.

¹⁸ Application at 4.

¹⁹ *Green Hills Annual Report* at 26.

²⁰ *Id.* at 30.

²¹ *Id.* at 7. This amount does not include reported miscellaneous deferred debits of \$1,359.

²² *Id.*

23. As of December 31, 2010, Green Hills District reported total debt and liabilities of \$433,215. This amount included current and accrued liabilities of \$18,715 and bonded debt of \$414,500, which Rural Development holds.²³

24. For the year ended December 31, 2010, Green Hills District reported total operating revenues of \$222,184 and total operating expenses of \$274,293, for a net operating loss of \$52,109.²⁴

25. As of December 31, 2010, Green Hills District employed one full-time employee and two part-time employees.²⁵

26. In late January 2012, Green Hills District experienced a complete failure of its water distribution system and was unable to provide water service to its customers for a period of 10 days. As a result of this failure, the Harlan County Judge/Executive declared that a state of emergency existed in the areas that Green Hills District served.²⁶

27. On March 2, 2012, Black Mountain District and Green Hills District executed an agreement to consolidate the two water districts and provide for Black Mountain District to operate Green Hills District pending completion of the proposed consolidation. More specifically, this agreement provided that:

a. Green Hills District and Black Mountain District will merge. The resulting water district will be named "Black Mountain Utility District."

²³ *Id.* at 8 and 17.

²⁴ *Id.* at 9.

²⁵ *Id.* at 5.

²⁶ Harlan County, Kentucky, Declaration of A Local State of Emergency (Feb. 1, 2012).

b. Upon execution of the agreement and pending Commission approval of the proposed merger, Black Mountain District will operate Green Hills District's water distribution system, maintain separate records for Green Hills District, and report monthly on its operation to Green Hills District's Board of Commissioners.

c. Within three months of the agreement's execution, Green Hills District's office, which is located in Bledsoe, Kentucky, will be closed.

d. Any funds that House Bill 410²⁷ and House Bill 608²⁸ allocated to Green Hills District or to Harlan County Fiscal Court for Green Hills District's benefit will be used exclusively to extend water mains from Baxter, Kentucky to a water tower on the crest of Pine Mountain and from that location to Little Shepherd Trail and down the south side of Pine Mountain to existing Green Hills District water mains.

e. The merged water district will assume responsibility for Green Hills District's bonds.

f. The merged water district will continue to assess Green Hills District's customers the rates that are currently set forth in Green Hills District's filed rate schedule. With the exception of special charges that the Commission authorizes, any future increases in the rates assessed to those customers will "be tied directly to increases imposed on . . . [existing Black Mountain District residential customers] with increases to be measured on an absolute dollar per gallon basis and not as a percentage."

g. Within five years of Commission approval of the proposed merger agreement, the merged water district will cause a rate study to be prepared.

²⁷ 2008 Ky. Acts Ch. 123.

²⁸ 2008 Ky. Acts Ch. 191.

h. The members of the Board of Commissioners of each water district will serve as members of the merged water district's board of commissioners for one year following the merger. The terms of all existing members will then lapse and the number of members of the merged water district's board of commissioners will be reduced to five. The Harlan County/Judge Executive will then fill these vacancies.

28. Since the execution of the merger agreement, Green Hills District's office, which is located in Bledsoe, Kentucky, has been closed.

29. Since the execution of the merger agreement, Green Hills District has terminated all of its employees. Black Mountain District has retained one of these employees.

30. The map set forth in the Appendix to this Order accurately depicts the facilities of public and municipal water utilities in Harlan County, Kentucky and the areas in which each utility provides water service.

31. The General Assembly has determined that "reduction of the number of operating water districts in the Commonwealth . . . [is] in the public interest, in that mergers of such districts will tend to eliminate wasteful duplication of costs and efforts, result in a sounder and more businesslike degree of management, and ultimately result in greater economies, less cost, and a higher degree of service to the general public; and that the public policy favors the merger of water districts wherever feasible."²⁹

32. The proposed merger is likely to produce greater economies of scale, reduce the cost of service, and improve service quality.

Based upon these findings of fact, the Commission makes the following conclusions of law:

²⁹ KRS 74.361(1).

1. Black Mountain District and Green Hills District are utilities subject to Commission jurisdiction.³⁰

2. KRS 278.020(5) provides that “[n]o person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission . . . without prior approval by the commission.”³¹

3. The proposed merger of the Joint Applicants into a single water district constitutes a transfer of control that requires Commission approval.

4. KRS 74.363(2) implies that Commission approval of a voluntary merger of two or more water districts is required.

5. Upon completion of the proposed merger, the merged water district will have the financial, technical, and managerial abilities to provide reasonable service to the Joint Applicants’ existing customers.

6. The proposed merger is consistent with the legislative finding of fact and policy set forth in KRS 74.361(1).

7. The proposed merger is in accordance with law and for a proper purpose and is consistent with the public interest.

³⁰ KRS 74.015; KRS 278.010(3)(d).

³¹ The Commission has previously found that KRS 278.020(6) is not applicable to a merger of two or more water districts. See Case No. 2007-00496, *Joint Application of Consumers Water District, Fancy Farm Water District, Hardeman Water District, and South Graves Water District For Approval of Merger and Formation of Graves County Water District* (Ky. PSC May 21, 2008) at 9, n.30. The merger of two or more water districts is effectively transferring control of these water districts’ property to a new entity. The new entity, however, does not exist until the merger. As there is no acquirer, KRS 278.020(6) is not applicable. See Case No. 2006-00197, *The Joint Petition of Kentucky-American Water Company, Thames Water Aqua Holdings GmbH, RWE Aktiengesellschaft, Thames Water Aqua US Holdings, Inc., and American Waterworks Company, Inc. for Approval of a Change in Control of Kentucky-American Water Company* (Ky. PSC Aug. 14, 2006).

IT IS THEREFORE ORDERED that:

1. The proposed merger of Black Mountain District and Green Hills District is approved subject to the conditions set forth in ordering paragraphs 2 through 7.

2. Within 150 days of the date of this Order, the Joint Applicants shall execute all documents and perform all other actions necessary to effect the proposed merger. Failure of the Joint Applicants to act within this time period shall render the Commission's approval null and void.

3. Any material revisions to the Joint Applicants' merger agreement shall be approved by the Commission before the merger agreement as amended may occur.

4. Within 10 days of the completion of the proposed merger, the merged water district shall:

a. Advise the Commission in writing of the merger's completion.

b. File a signed and dated adoption notice in accordance with 807 KAR 5:011, Section 11, adopting, ratifying, and making its own all rates, rules, classifications, and administrative regulations of the Joint Applicants in effect at the time of the merger.

c. File with the Commission the journal entries that will be used to record the proposed merger.

5. Within 10 days of the filing of its adoption notice, the merged water district shall issue and file with the Commission in its own name each utility's tariff as it proposes to put into effect in lieu thereof in the form prescribed in 807 KAR 5:011, Section 11.

6. Beginning on August 1, 2012 and every month thereafter until the proposed merger has been completed, the Joint Applicants shall advise the Commission in writing of the status of the proposed merger.

7. The merged water district shall retire bonded obligations secured by the revenue from either Green Hills District or Black Mountain District in accordance with KRS 74.363(4).

8. Any documents filed in the future pursuant to ordering paragraphs 4 and 6 of this Order shall reference this case number and shall be retained in the utility's general correspondence file.

By the Commission

ATTEST:

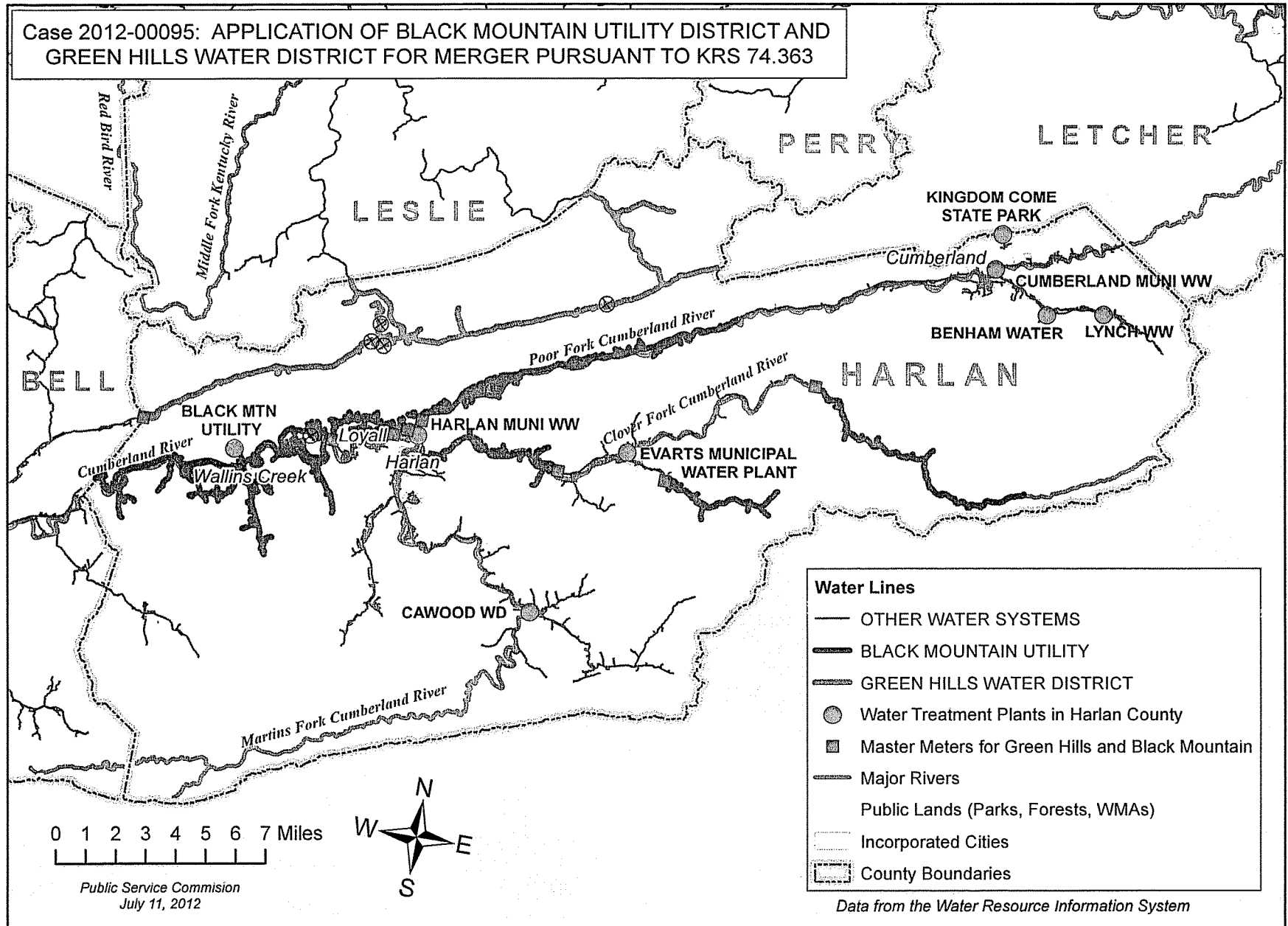


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2012-00095 DATED JUL 13 2012

Case 2012-00095: APPLICATION OF BLACK MOUNTAIN UTILITY DISTRICT AND GREEN HILLS WATER DISTRICT FOR MERGER PURSUANT TO KRS 74.363



Honorable Sidney B Douglass
117 South Second Street
P. O. Drawer 839
Harlan, KENTUCKY 40831-0839