

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CAROLD CRAYCRAFT)	
)	CASE NO.
COMPLAINANT)	2015 -00038
V.)	
)	
BLACK MOUNTAIN UTILITY DISTRICT)	
)	
DEFENDANT)	

ORDER

On January 29, 2015, Carold Craycraft (“Complainant”) filed a formal complaint against Black Mountain Utility District (“Black Mountain”) alleging, among other things, that the Kentucky General Assembly (“Legislature”) had allocated a total of \$325,000 for a water project to extend drinking water service to an area in Harlan County, Kentucky, known as Woodard Branch and that he had not received water service.¹ Complainant requested that Black Mountain extend water service, during 2015, to his property at 499 Woodard Branch Road, Bledsoe, Kentucky (“499 Woodard Branch”).²

On February 6, 2015, the Commission entered an Order that directed Black Mountain to satisfy or answer the complaint. Through the same Order, the Commission also directed Black Mountain to respond to our request for information concerning Kentucky Water Resource Information System (“WRIS”) Project Number WX21095005,

¹ Complaint (filed Jan. 29, 2015) at 3.

² *Id.* at 1 and 3.

the “Woodard Br. Waterline Extension – Green Hills System Rehabilitation” drinking water project.³

On February 25, 2015, Black Mountain filed an answer to the complaint, its responses to the Commission’s request for information, and a motion to dismiss. Black Mountain stated that, with regard to Complainant, it had followed “any and all requirements of Kentucky law, and the rules of the Kentucky Public Service Commission, and has done so in dealing with” WRIS Project Number WX21095005.⁴ Black Mountain further stated that the complaint failed to set forth a *prima facie* case that it had violated any statute or Commission regulation.⁵ Black Mountain asked that the complaint be dismissed with prejudice.⁶

On March 27, 2015, we determined that there were material issues of fact in dispute between the parties and that Black Mountain’s motion to dismiss should be denied.⁷ In order for the Commission to investigate Complainant’s claims and provide the parties an opportunity to conduct discovery, we established a procedural schedule.⁸ Black Mountain responded to two additional requests for information by Commission Staff, certain materials received by Commission Staff from Complainant on June 1,

³ Order (Ky. PSC Feb. 6, 2015), Appendix B.

⁴ Black Mountain's Answer to Complaint/Requests for Information and Motion to Dismiss (“Answer”) at 1 and 2.

⁵ *Id.* at 3.

⁶ *Id.* at 4.

⁷ Order (Ky. PSC Mar. 27, 2015) at 2 and 3.

⁸ *Id.* at 3.

2015, were made part of the record in this case,⁹ and an informal conference was held on May 8, 2015. The matter now stands submitted to the Commission for a decision.

BACKGROUND

During the 2014 Regular Session, as part of House Bill 235 of that session, an act relating to appropriations providing financing and conditions for the operations, maintenance, support, and functioning of the government of the Commonwealth of Kentucky, the Legislature reauthorized and reallocated \$325,000 for the biennium for a project entitled “Harlan County Fiscal Court – Black Mountain Utility District – Greenhill Water Line Rehabilitation Project Reauthorization and Reallocation.”¹⁰ The following description was given.

Reauthorization and Reallocation: The above project is authorized from a reallocation of the Harlan Fiscal Court – Black Mountain Utility District – Greenhill Water – Woodward Water Project Reauthorization and Reallocation project as set forth in 2012 Ky. Acts, ch. 144, Section 1., Part II, A., 2. 016.¹¹

The project authorized by the Legislature in 2014 was assigned Project Number WX21095005 in Kentucky’s WRIS. Per the WRIS Project Description:

The project proposes to extend 350 ft of 6” waterline, 2950 ft of 4” waterline including one pump station along Woodard Branch to served 8 customers. This project has funds for system wide rehabilitation/leak detection and repair as well as to assist in equipment purchase needs.¹²

⁹ Order (Ky. PSC July 2, 2015) at 11.

¹⁰ 2014 Ky. Acts, Ch. 117, Section 1, Part II, A., 2., 004. Note: In Case No. 2012-00095, *Application of Black Mountain Utility District and Green Hills Water District for Merger Pursuant to KRS 74.363* (Ky. PSC July 13, 2012), the Commission approved the merger and consolidation of Black Mountain and Green Hills Water District into a single district named “Black Mountain Utility District.”

¹¹ *Id.*

¹² Black Mountain’s Response to Commission Staff’s First Request for Information (“Staff’s First Request”), Item 1, WRIS Drinking Water Project Profile for Project Number WX21095005.

On January 29, 2015, Complainant filed a formal complaint against Black Mountain alleging that the Legislature had provided funding for a water line extension to the Woodard Branch area of Harlan County that would include his property at 499 Woodard Branch. Black Mountain stated that the property at 499 Woodard Branch was a property within the scope of "Project Number WX21095005, until October 24, 2014, when State Representative Rick G. Nelson, of the 87th Legislative District, by letter advised Ms. Debbie Milton, Kentucky Infrastructure Authority, that the 'legislative intent for the above-mentioned project ... was for the rehabilitation only of existing waterlines."¹³ In further support of its position, Black Mountain supplied an October 29, 2014, letter from Debby Milton, financial analyst with the Kentucky Infrastructure Authority ("KIA") to State Representative Nelson, stating that the KIA had halted the processing of the grant until such time as a determination can be made regarding the legislative intent for the grant.

DISCUSSION

The Commission's jurisdiction extends to the rates and service of all utilities in this state.¹⁴ The Commission has promulgated an administrative regulation that addresses extensions of service by a water utility. 807 KAR 5:066, Section 11(1), states:

Normal extension. An extension of fifty (50) feet or less shall be made by a utility to its existing distribution main without charge for a prospective customer who shall apply for and contract to use service for one (1) year or more.

¹³ Black Mountain's Response to the Commission's Order of February 6, 2015, Item 1.

¹⁴ KRS 278.040(2).

807 KAR 5:066, Section 11(2)(a), addresses other extensions and states:

When an extension of the utility's main to serve an applicant or group of applicants amounts to more than fifty (50) feet per applicant, the utility may if not inconsistent with its filed tariff require the total cost of the excessive footage over fifty (50) feet per customer to be deposited with the utility by the applicant or the applicants, based on the average estimated cost per foot of the total extension.

Black Mountain is a utility subject to Commission's jurisdiction, and it is required to file with the Commission its "schedules showing all rates and conditions for service established by it and collected or enforced."¹⁵ Black Mountain's tariff schedules on file with the Commission address extensions of service and include the following provision:

For each extension to the district's water distribution main in excess of fifty (50) feet, the district shall require the customer to whose premises such extension is made to deposit with the district the total cost of the excessive footage over fifty (50) feet, based on the average estimated cost per foot of the total extension.¹⁶

The record in this case includes a preliminary estimate by Black Mountain stating that it would cost \$142,971.73 to provide Complainant with service.¹⁷ Black Mountain stated that Complainant would be responsible for the entirety of the cost of the extension, less an amount for 50 feet of the extension.¹⁸ Black Mountain's position regarding Complainant's responsibility for the cost of excessive footage over 50 feet is consistent with both the Commission's administrative regulations and its tariffs.

¹⁵ KRS 278.160(1).

¹⁶ *Black Mountain Utility District Rates & Charges and Rules & Regulations for Furnishing Water Service*, P.S.C. Ky. No. 1, Original Sheet 20, p. 2.

¹⁷ Black Mountain's Response to Commission Staff's Second Request for Information ("Staff's Second Request"), Item 1.

¹⁸ *Id.*

Complainant, pursuant to the Commission's regulations and under Black Mountain's tariff schedules, can apply to Black Mountain for an extension of service to 499 Woodard Branch. Complainant would be responsible for depositing with Black Mountain the amount of the cost for the excessive footage of the extension, an amount which Black Mountain is not permitted to assign to its remaining customer base. The record, however, does not contain evidence that Complainant has applied for service under Black Mountain's tariff provisions addressing water main extensions and has agreed to deposit the excessive footage cost with the utility. Complainant, as the party with the burden of proof, has not identified how Black Mountain has denied him any rights under the Commission's administrative regulations or Black Mountain's tariff provisions.

Complainant does allege that Black Mountain already has the funding to extend service to the Woodard Branch area consequent to a grant by the Legislature. When funding from other sources, including grants by the Legislature, is available to fund an extension project, then the assignment of costs of the excessive footage to an applicant for water service may be reduced or in some cases eliminated. The reduction or elimination is not due to the excessive footage costs being assigned to the utility's remaining customers; rather, it is due to a third-party becoming responsible for funding the excessive footage costs.

The evidence in the record indicates the existence of a controversy regarding the legislative intent for a \$325,000 grant identified as WRIS Project Number WX21095005, the grant that Complainant believes is available to fund the extension. The KIA has halted processing the grant; therefore, it is not currently available to Black

Mountain. If the grant is ultimately determined to be for the extension of water service to the Woodard Branch area of Harlan County, then the grant will reduce if not eliminate Complainant's responsibility for paying costs relating to excessive footage for the extension.

The controversy concerning the grant, however, is not a matter that we can consider and resolve. The Commission's jurisdiction extends only to the rates and service of utilities. Black Mountain, which does not currently have access to the grant, states that it "does not have the capability, or responsibility, to determine legislative intent" for the grant.¹⁹ The Commission cannot find error in Black Mountain's position on this point. Further, the Commission is without authority to make a determination or declaration concerning the legislative intent for the grant for WRIS Project Number WX21095005. The Commission finds that the complaint should be dismissed.

807 KAR 5:001, Section 9(1), provides that the Commission may waive a hearing that is not required by law if a hearing is found unnecessary for the protection of substantial rights or is not in the public interest. A hearing is not statutorily required when a complaint is filed. Because the Commission is without power to resolve the issue of legislative intent for the project and cannot order Black Mountain to resolve the issue, we cannot grant any relief on this point, and there are no grounds warranting a hearing on the issue. Complainant has not demonstrated that he has applied for and agreed to meet the conditions for an extension of service in the absence of funding of the extension by a grant. The possible development of a controversy regarding an application for an extension of service by Complainant under this scenario is too remote

¹⁹ Black Mountain's Response to Staff's Second Request, Item 5.

to constitute a real controversy.²⁰ It is not necessary to hold a hearing or continue this investigation to consider questions concerning a right that Complainant may or may not assert.

FINDINGS

Having reviewed the complaint and the record in this case and being otherwise sufficiently advised, the Commission finds that:

1. On January 29, 2015, Complaint filed a formal complaint against Black Mountain that alleged that the Legislature had provided funding for a drinking water line extension project that would provide water service to an area in Harlan County, Kentucky, including 499 Woodard Branch Road.

2. House Bill 235 passed during the 2014 Regular Session of the Legislature reauthorized and reallocated \$325,000 for a project titled “Harlan County Fiscal Court – Black Mountain Utility District – Greenhill Water Line Rehabilitation Project Reauthorization and Reallocation.”

3. The project at issue in House Bill 235 was assigned Project Number WX21095005 in Kentucky’s Water Resource Information System.

4. The KIA is the state agency with responsibility for processing the grant for Project Number WX21095005.

5. The KIA, through an October 29, 2014 letter from Debby Milton, a financial analyst with the KIA, to State Representative Rick G. Nelson, stated that it was halting

²⁰ See, for comparison of judicial requirement of the existence of an actual controversy in order to render a declaration, *Veith v. City of Louisville*, 355 S.W.2d 295, 297 (Ky. 1962). (Court will not declare prospective or future rights regarding a matter that may or may not arise in the future.) See also *Alexander v. Hicks*, 488 S.W.2d 336, 337 (Ky. 1972). (Court should not decide question which may never arise.)

processing of the grant for Project Number WX21095005 due to an issue regarding the legislative intent for the grant.

6. Black Mountain stated that 499 Woodard Branch Road was a property considered within the scope of Project Number WX20195005 until 2014, when the processing of the grant was halted by the KIA.

7. There is an issue regarding the legislative intent for Project Number WX21095005.

8. The Commission's jurisdiction extends to the rates and service of public utilities.

9. The legislative intent for Project Number WX21095005 is not a matter for the Commission to determine or an issue that falls within the Commission's jurisdiction.

10. A hearing on this matter is not required by statute.

11. The Commission should not hold a hearing to consider questions concerning an issue that is not within its jurisdiction.

12. The Commission should not continue this investigation in order to consider an issue that is not within its jurisdiction.

13. Complainant has the right to make a request for an extension of service regardless of whether or how the issue of the legislative intent for Project Number WX21095005 is resolved.

14. Complainant has not made a formal application for water service under Black Mountain's tariff provisions addressing water main extensions.

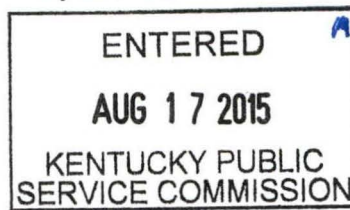
15. The Commission should not hold a hearing or continue an investigation into questions that are too remote to constitute a real controversy.

16. A hearing is unnecessary for the protection of substantial rights and is not in the public interest.


IT IS THEREFORE ORDERED that:

1. A hearing shall not be held in this matter.
2. The Complaint is dismissed and this case is closed and removed from the Commission's docket.

By the Commission



ATTEST



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