

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

The Commission established this case to review the issues raised by Complainant. A procedural schedule was established which provided for discovery and an informal conference. On August 17, 2015, the Commission entered an Order (“August 17, 2015 Order”) that dismissed the Complaint, closed the case, and removed

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

² *Id.* at 1 and 3.

the case from the Commission's docket.³ In dismissing the Complaint, the Commission made findings that, among other things, the \$325,000 at issue corresponds to a project assigned as Project Number WX21095005. In Kentucky's Water Resource Information System, the Kentucky Infrastructure Authority is the state agency with responsibility for processing the grant for Project Number WX21095005, and that 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.⁴

We also found, in our August 17, 2015 Order, that a hearing on the Complaint was not required by statute, that the Commission should not hold a hearing to consider questions concerning an issue that is not within its jurisdiction, and that the Commission should not continue the investigation in order to consider an issue that is not within its jurisdiction.⁵

KRS 278.380 authorizes the Commission to deliver its Orders by means of electronic transmission rather than by mail, and the August 17, 2015 Order was delivered to Counsel for Complainant by electronic transmission.⁶

On August 19, 2015, the Commission received a Notice and Motion ("Complainant's Notice and Motion") filed by Counsel for Complainant. The Motion requests leave to take the deposition of Kentucky State Representative Tim Couch and states that "Representative Couch was involved in the original designation of these

³ August 17, 2015 Order at 10.

⁴ *Id.* at 8 and 9.

⁵ *Id.* at 9.

⁶ The Service List is attached to the August 17, 2015 Order on the last unnumbered page.

funds [the \$325,000] for the waterline extension.”⁷ The pleading also requests a hearing on the motion.⁸

The Certificate of Service for the Complainant’s Notice and Motion stated that it was served by U.S. Mail, postage pre-paid to the Executive Director of the Public Service Commission and Counsel for Black Mountain on August 14, 2015. Complainant’s Notice and Motion was, therefore, mailed by Counsel for Complainant prior to the entry of the August 17, 2015 Order but not received by the Commission until after the entry of that Order.

807 KAR 5:001, Section 4(9), states:

Filing.

(a) Unless electronic filing procedures established in Section 8 of this administrative regulation are used, a paper shall not be deemed filed with the commission until it is physically received by the executive director at the commission’s offices during the commission’s official business hours and the paper meets all applicable requirements of KRS Chapter 278 and KAR Title 807.

(b) The executive director shall endorse upon each paper or document accepted for filing the date of its filing. The endorsement shall constitute the filing of the paper or document.

The electronic filing procedures established in 807 KAR 5:001, Section 8, are not being used in this case. Pursuant to the applicable regulation, 807 KAR 5:001, Section 4(9), Complainant’s Notice and Motion was not received until August 19, 2015, the date that the pleading was physically received by the Executive Director at the Commission’s offices during the Commission’s official business hours.⁹ Complainant’s Notice and

⁷ Notice and Motion, at 1.

⁸ *Id.*

⁹ See KAR 5:001, Section 8(1), and KAR 5:001, Section 4(9)(a).

Motion was, therefore, received two days after the Commission issued its August 17, 2015 Order dismissing the complaint and closing this case. Pursuant to KRS 278.400, any party to a Commission proceeding may, within 23 days after the issuance of a final order, file a request for a rehearing. Under the procedural circumstances presented here, the Commission will treat the Complainant's Notice and Motion as a petition for rehearing.

Complainant's request is to take the deposition of Representative Couch. KRS 278.340 provides:

The commission itself may take depositions, or grant deposition rights at its discretion to any party in a proceeding before the commission. Depositions in commission proceedings shall be taken in accordance with the Rules of Civil Procedure.

In our August 17, 2015 Order, we stated that "[t]he 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 We further stated that the Commission should not hold a hearing or continue the investigation in order to consider an issue that is not within our jurisdiction.¹¹ The granting of deposition rights to a party is, pursuant to KRS 278.340, at the discretion of the Commission, and we decline to grant deposition rights to Complainant because we have already determined that questions concerning the legislative intent for Project Number WX21095005 are not for the Commission to determine and are outside of our jurisdiction. There is nothing in Complainant's Notice and Motion to support a reopening of this case to conduct a further investigation into the issue of our jurisdiction to determine legislative intent for a budget project to be

¹⁰ August 17, 2015 Order at 9.

¹¹ *Id.*

processed by the Kentucky Infrastructure Authority. Therefore, we find that Complainant's petition for rehearing, in the form of a Notice and Motion, should be denied.

Having carefully considered Complainant's Notice and Motion, the Commission finds that:

1. The Commission entered an Order on August 17, 2015, that dismissed this case, closed the case, and removed the case from the Commission's docket.

2. Pursuant to KRS 278.380, the Commission is authorized to serve its Orders by means of electronic transmission.

3. The Commission's August 17, 2015 Order was served upon Complainant by electronic mail transmission to Counsel for Complainant.

4. On August 19, 2015, the Commission received a pleading from Complainant by mail styled "Notice and Motion" in which Complainant requests leave to take the deposition of Kentucky State Representative Tim Couch.

5. Complainant seeks to take the deposition of Representative Couch to take evidence on the legislative history of the grant of funds for WRIS Project Number WX21095005.

6. Pursuant to 807 KAR 5:001 Section 4(9), August 19, 2015, is the date of the filing of Complainant's Notice and Motion.

7. Complainant's Notice and Motion was filed after the entry of the August 17, 2015 Order that dismissed the Complaint and closed the case.

8. Complainant's Notice and Motion should be treated as a petition for rehearing under KRS 278.400.

9. KRS 278.340 provides, in pertinent part, that the Commission may grant “deposition rights at its discretion to any party in a proceeding before the commission.”

10. The Commission finds that the request to take Representative Couch’s deposition should be denied because Complainant’s sole purpose for taking the deposition is to determine that the legislative intent for Project Number WX21095005, and the legislative intent for a budget project to be processed by the Kentucky Infrastructure Authority is not a matter for the Commission to determine or an issue that falls within the Commission’s jurisdiction.

11. A hearing on Complainant’s Notice and Motion is not required by statute, is unnecessary for the protection of substantial rights, and is not in the public interest.

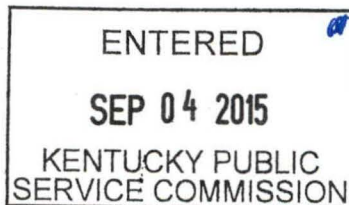
12. Complainant’s petition for rehearing, in the form of a Notice and Motion, should be denied.

IT IS THEREFORE ORDERED that:

1. Complainant’s petition for rehearing, in the form of a Notice and Motion for leave to take the deposition of Kentucky State Representative Tim Couch, is denied.

2. Complainant’s request for a hearing on his Notice and Motion is denied.

By the Commission



ATTEST:



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