

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION INTO POSSIBLE	)	
VACANCIES ON THE BOARD OF	)	CASE NO.
COMMISSIONERS OF CUMBERLAND COUNTY	)	2023-00234
WATER DISTRICT	)	

ORDER

On August 31, 2022, the Commission opened an investigation into Cumberland County Water District’s (Cumberland District) alleged failure to comply with a Commission Order.<sup>1</sup> On January 30, 2023, the Commission issued an Order incorporating the records and filings of Case No. 2022-00291, Cumberland District’s alternative rate adjustment application. As part these cases, Cumberland District provided Board of Commissioners meeting minutes from 2020 until 2022.<sup>2</sup> During a hearing in Case No. 2022-00244, it was confirmed that the Cumberland County Judge Executive comes to Cumberland District’s board meetings to swear in any new commissioners.<sup>3</sup> Following this, the Cumberland County Fiscal Court affirms the appointment.

KRS 74.020 dictates the appointment of commissioners to a water district. The county fiscal court has the sole discretion to appoint a commissioner for a specified term

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<sup>1</sup> Case No. 2022-00244, *Electronic Alleged Failure of Cumberland Water District and Its Officers, Eric Carver, Sandy Hieneman, Troy Norris, Mark Vibbert, and Jay Cary and Its Manager, Matthew Dyer, to Comply with a Commission Order, KRS 278.990* (Ky. PSC July 5, 2023).

<sup>2</sup> Case No. 2022-00291, *Electronic Application of Cumberland County Water District for a Rate Adjustment Pursuant to 807 KAR 5:076*, Cumberland District’s Response to Commission Staff’s First Request for Information (filed Nov. 3, 2022), Item 4, Exhibit A 4.

<sup>3</sup> Case No. 2022-00244, Direct Testimony of Troy Norris, Hearing Video Testimony of April 4, 2023 Hearing at 11:16:00-11:19:00.

and compensation. KRS 74.020(4), which addresses the appointment of members to the board 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.

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.

The evidence received by the Commission in Case No. 2022-00244 and in Case No. 2022-00291 raises questions as to whether any appointment to the Board of Commissioners of Cumberland District complies with KRS 74.020, and if these appointments did not comply with the law, how long has a technical vacancy existed. Accordingly, the Commission finds that this proceeding should be initiated to determine whether such vacancy did exist for more than 90 days. The Commission makes Cumberland District a party to this case, and Cumberland District should respond to any request for information issued by Commission Staff as directed in the request.

The Commission also will request, by separate letter, that the Cumberland County Clerk file copies of the meeting minutes of the Cumberland County Fiscal Court appointing the commissioners to Cumberland District.

If the Commission finds that a vacancy or vacancies did exist for more than 90 days, the Commission 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 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 who meet these requirements, who is best suited to sit on the Board. The Commission also directs that a copy of this Order be served upon the Cumberland County Judge Executive, the Cumberland County Fiscal Court, the Cumberland County Attorney, and the Board to notify them of this proceeding.

IT IS THEREFORE ORDERED that:

1. This proceeding is initiated to determine whether a vacancy existed on the Cumberland District's Board for more than 90 days.
2. Cumberland District is made a party to this proceeding, and a copy of this Order shall be served upon Cumberland District and its counsel at the service addresses provided in Case No. 2022-00244.
3. Cumberland District shall respond to any request for information issued by Commission Staff as directed in the request.
4. Any party filing documents with the Commission shall serve a copy of those documents upon all other parties.

5. All records and filings made in Case No. 2022-00244 and Case No. 2022-00291 are hereby incorporated by reference in this matter.

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 Cumberland County Judge Executive, the members of the Cumberland County Fiscal Court, the Cumberland County Attorney, and the Cumberland District's Board of Commissioners.

8. Nothing in this Order shall be construed as to prohibit the Commission from entering further Orders in this matter.

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PUBLIC SERVICE COMMISSION

Chairman

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Vice Chairman

*Angie Hahn*

Commissioner

*May Pat Rizer*

*MAR  
8/8/23  
Rizer  
Hahn*

ENTERED  
AUG 08 2023 rcs  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

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Executive Director

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