

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

The Commission initiated this proceeding to investigate the possible vacancies on the Cumberland County Water District (Cumberland District) Board of Commissioners (Board). The Commission made a finding in this case that a vacancy existed.<sup>1</sup> Pursuant to KRS 74.020(4), the Commission, by this Order, appoints Mark Vibbert to fill the vacant seat.

LEGAL STANDARD

Water districts formed pursuant to KRS Chapter 74, like Rattlesnake Ridge District, “shall be administered by a board of commissioners which shall control and manage the affairs of the district.”<sup>2</sup> The term of each water district commissioner shall be four years, “except as provided in this section.”<sup>3</sup> Pursuant to KRS 74.020(1)(a), “[i]nitial appointments shall be for terms of two (2), three (3), and four (4) years, as designated by the [appropriate fiscal] court.”<sup>4</sup> Further, KRS 74.020(4) states that vacancies “resulting

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<sup>1</sup> Order (Ky. PSC Jan. 5, 2024) at 4.

<sup>2</sup> KRS 74.020(1).

<sup>3</sup> KRS 74.020(1).

<sup>4</sup> KRS 74.020(1)(a).

from cause other than expiration of the term [of the water commissioner] shall be filled for the unexpired term only.”<sup>5</sup> Generally, the county judge/executive has authority to appoint the members of the board of commissioners of a water district subject to the approval of the fiscal court.<sup>6</sup> However, if the county judge/executive, with approval of the fiscal court, fails to fill “a vacancy resulting from the expiration of a term or the death, resignation, or removal of the incumbent . . . within ninety (90) days following the vacancy,” then the vacancy “shall be filled by the Public Service Commission.”<sup>7</sup>

KRS 74.020(8)(b) states that within 12 months of initial appointment, each commissioner shall complete water commissioner training. Furthermore, KRS74.020(8)(b) states that “any commissioner who fails to complete the program within twelve (12) months of his or her initial appointment shall forfeit his or her office and all right to act in discharge of the duties of the office.”

### BACKGROUND

Cumberland District is a water utility district organized pursuant to KRS Chapter 74. It operates water distribution facilities that service approximately 2,642 residential customers, 75 commercial customers, 5 industrial customers, and 1 public authority in Cumberland County, Kentucky.<sup>8</sup>

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<sup>5</sup> KRS 74.020(4).

<sup>6</sup> See KRS 74.020(1)(a) (“Members of the board . . . shall be appointed by the county judge/executive with the approval of the fiscal court.”); see also KRS 74.020(4)(“Vacancies [on a board of commissioners] shall be filled by the same appointing authority [the county judge executive/fiscal court in appropriate county] which is empowered to make the original appointment.”).

<sup>7</sup> KRS 74.020(4).

<sup>8</sup> *Annual Report of Cumberland District to the Public Service Commission for the year ended December 31, 2022* (2022 Annual Report) at 49.

On August 8, 2023, the Commission established this case to determine whether a vacancy exists on Cumberland District's Board following evidence reviewed by the Commission in Case No. 2022-00244<sup>9</sup> and in Case No. 2022-00291<sup>10</sup> that the Cumberland District Board may not be in compliance with KRS 74.020. On September 29, 2023, and November 22, 2023, Cumberland District responded to requests for information from Commission Staff with information and documents regarding the appointments to the Board.

On January 5, 2024, the Commission found that two vacancies existed for the Cumberland District Board seats of Mark Vibbert and Sandy Hieneman.<sup>11</sup> On January 25, 2024, Cumberland District filed a motion, pursuant to KRS 278.400, requesting reconsideration of the Order entered January 5, 2024, for the two vacancies on the Board and requested an extension of time to provide notice of these vacancies. On February 8, 2024, the Commission entered an Order denying the request to reconsider the two vacancies on the Board and granting the request for an extension of time.

On February 23, 2024, Cumberland District filed a motion pursuant to KRS 278.400, requesting reconsideration of the Commission's January 5, 2024 and February 8, 2024 Orders that found a vacancy on the Cumberland District's Board for the position last filled by Sandy Hieneman. Cumberland District argued that J.R. Thacker

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<sup>9</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.*

<sup>10</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.*

<sup>11</sup> Jan. 5, 2024 Order at 4.

had been timely appointed by the Cumberland County Fiscal Court.<sup>12</sup> By Order, on March 12, 2024, the Commission granted Cumberland District's motion for reconsideration, finding that J.R. Thacker was timely appointed.

As it stands, the Board has one vacancy for the position that was previously filled by Mark Vibbert. On March 4, 2024, Cumberland District provided proof of publication for the vacant seats. Cumberland District ran notice on February 28, 2024, in the *Cumberland County News*.<sup>13</sup>

### DISCUSSION AND FINDINGS

Mark Vibbert made written application on March 18, 2024, to be considered for the position pursuant to the January 5, 2024 and February 8, 2024 Orders. Mr. Vibbert is a resident of Cumberland County. Mr. Vibbert highlighted that he has previously been on the Board since 2010.<sup>14</sup> He also noted that he has attended trainings as provided by the Commission.<sup>15</sup> The Cumberland County Judge/Executive also submitted support of his selection.<sup>16</sup>

Based upon our review of the evidence of record, and Mr. Vibbert's experience, the Commission finds that Mr. Vibbert is the best-suited candidate and there is no information to suggest that he is unqualified to serve in the designated position. The Commission further finds that Mr. Vibbert meets the qualifications of a member of a board of commissioners: he resides in Cumberland District's territory, is of legal age, possesses

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<sup>12</sup> Cumberland District's Motion to Reconsider (filed Feb. 23, 2024) at 1.

<sup>13</sup> Cumberland District's Proof of Publication/Notice of Filing (filed Mar. 4, 2024).

<sup>14</sup> Mark A. Vibbert Request for Consideration (filed Mar. 18, 2024).

<sup>15</sup> Mark A. Vibbert Request for Consideration (filed Mar. 18, 2024).

<sup>16</sup> Letter of Support for Mark Vibbert Appointment (filed Apr. 11, 2024).

adequate education, business skills, and experience to perform the duties of water district commissioner, and does not have any legal disability that would disqualify him from serving in the position. Accordingly, the Commission finds that Mr. Vibbert should be appointed to fill the existing vacant seat on Cumberland District's Board. The Commission notes that Mr. Vibbert should ensure that he reads and complies with KRS 74.020, including all training requirements.

Mark Vibbert shall be appointed for a term of four years. Cumberland District has previously noted that the normal term length for commissioners is three years.<sup>17</sup> Cumberland District should ensure to follow the four-year term requirement pursuant to KRS 74.020(1) in future reappointments.

IT IS THEREFORE ORDERED that:

1. Mark Vibbert is appointed to fill the vacant seat identified in the January 5, 2024 and February 8, 2024 Order. The term shall expire on April 19, 2028.
2. The Executive Director shall serve a copy of this Order upon the Cumberland County Judge/Executive, the members of the Cumberland Fiscal Court, and the Cumberland District Board.
3. This case is closed and removed from the Commission's docket.

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<sup>17</sup> Cumberland District's Response to Commission Staff's Second Request for Information, Item 2 (filed Nov. 22, 2023) at 1.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner



ATTEST:

  
Executive Director

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