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February 25, 2015

Mr. Jeff Derouen
Kentucky Public Service Commission
211 Sower Blvd.
Frankfort, Kentucky 40602

**RE: Carold Craycraft v. Black Mountain Utility Dist.
Public Service Commission, No. 2015-00038**

Dear Mr. Derouen:

Please find enclosed the original and ten (10) copies of the Defendant's Answer to Complaint/Requests for Information, and Motion to Dismiss for filing in the above-styled matter.

I have also enclosed an extra copy of the document, and a self-addressed, postage pre-paid, return envelope. If you could file-stamp the additional copy and return it to me in the provided envelope, it would be greatly appreciated. I thank you in advance for your assistance.

If you have any questions or comments, please do not hesitate to contact me.

Sincerely,


J. Scott Lisenbee

Enclosures

COMMONWELTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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FEB 26 2015

PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

CAROLD CRAYCRAFT

COMPLAINANT

V.

PSC CASE NO. 2015-00038

BLACK MOUNTAIN UTILITY DISTRICT

DEFENDANT

**BLACK MOUNTAIN UTILITY DISTRICT'S ANSWER TO COMPLAINT/
REQUESTS FOR INFORMATION
And
MOTION TO DISMISS**

Comes now the Defendant, BLACK MOUNTAIN UTILITY DISTRICT, by and through the undersigned counsel, and for its Answer to Complaint/Requests for Information, and Motion to Dismiss, does hereby state as follows:

ANSWER

1. That the Complaint is a recitation of facts as alleged by the Complaint, Mr. Carold Craycraft (hereinafter "Craycraft");
2. That the Complaint is best addressed by answering the Requests for Information, contained in Appendix B to the Order of February 6, 2015;
3. That the Defendant, Black Mountain Utility District (hereinafter "BMUD"), would deny any allegations against it by Craycraft in the Complaint, and states that it follows any and all requirements of Kentucky law, and the rules of the Kentucky Public Service

Commission, and has done so in dealing with Kentucky Water Resource Information System (“WRIS”) Project Number WX21095005;

APPENDIX B

4. That the Defendant, BMUD, incorporates paragraphs 1-3 by reference, as if fully set out herein;

5. That in response to Paragraph 1 of Appendix B, the Defendant, BMUD, would state that 499 Woodard Branch Road, Bledsoe, Kentucky, *was* a property within the scope of the Woodard Branch Waterline Extension – Green Hills System Rehabilitation project, Kentucky Water Resource Information System (“WRIS”) Project Number WX21095005, until October 24, 2014, when State Representative Rick Nelson, of the 87th Legislative District, by letter advised Ms. Debbie Milton, Kentucky Infrastructure Authority, that the “legislative intent for the above-mentioned project (WX21095005) was for the rehabilitation only of existing waterlines,” and that he, “would like for this project to be halted until such time as a determination can be made in regard to this issue.” (Exhibit A, attached). Based upon this letter, and request of Representative Nelson, Ms. Milton halted processing of the grant until a determination could be made, as evidenced by her letter to Representative Nelson of October 29, 2014. (Exhibit B, attached);

6. That in response to Paragraph 2 of Appendix B, the Defendant, BMUD, would state that the WRIS Project Number WX21095005 has not been completed due to reasons stated in response to Appendix B, No. 1, above. Additionally, there is no estimated time of completion, as evidenced by the letters attached hereto, the project has been halted at Representative Nelson’s request;

7. That in response to Paragraph 3 of Appendix B, the Defendant, BMUD, would state that WRIS Project Number WX21095005 has been funded, but that the funds are not

currently available due to reasons stated in response to Appendix B, No. 1, above. The status of the funding is currently halted at Representative Nelson's request until further determinations;

FIRST AFFIRMATIVE DEFENSE

That the Complaint fails to state a cause of action against the Defendant for which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

That the Complaint fails to set forth a *prima facie* case that the Defendant has violated any statute of this Commonwealth, or any Commission regulation, and the Complaint should be dismissed for that reason.

THIRD AFFIRMATIVE DEFENSE

That at all relevant times, the Defendant has acted in accordance with the rules and regulations of the Kentucky Public Service Commission, and Kentucky law.

FOURTH AFFIRMATIVE DEFENSE

That the Defendant respectfully reserves the right to plead any and all additional defenses that discovery may reveal.

MOTION TO DISMISS

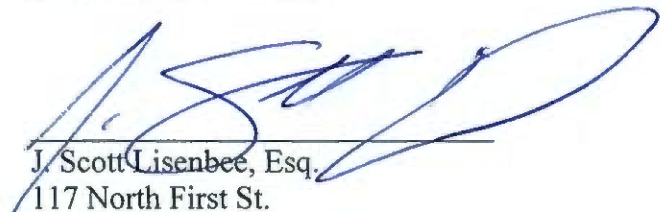
That based upon the foregoing the Defendant respectfully request that this Complaint be dismissed, specifically: the Defendant has violated no rules or regulations of the Kentucky Public Service Commission, or Kentucky law, and the Complaint does not allege such activity by the Defendant; and the Defendant cannot proceed with the project as the funding was halted as

shown in Exhibits A and B attached hereto. Accordingly, the Complaint has failed to state a claim for which relief can be granted and the Complaint should be dismissed with prejudice.

WHEREFORE, the Defendants, BLACK MOUNTAIN UTILITY DISTRICT, hereby pray to the Court for the following relief:

1. That the Complaint herein be DISMISSED, with prejudice, and stricken from the Commission's docket;
2. For attorney fees and court costs herein expended;
3. For any and all other relief to which the Defendants may be entitled.

Respectfully Submitted,



J. Scott Lisenbee, Esq.
117 North First St.
Harlan, Kentucky 40831
Phone: (606)573-1766
Fax: (606) 573-1913

ATTORNEY FOR DEFENDANT

I hereby certify that the original and ten (10) copies of the foregoing has been served via UPS to:

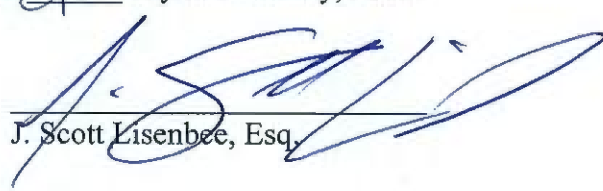
Mr. Jeff Derouen
Kentucky Public Service Commission
211 Sower Blvd.
Frankfort, Kentucky 40602

And by delivering a copy via US Mail, Postage prepaid to:

Mr. Carold Craycraft
499 Woodard Branch Rd.
Bledsoe, Kentucky 40810

This the 25th day of February, 2015.

By:



J. Scott Lisenbee, Esq.

VERIFICATION

I, Ray Metcalfe, Operations Manager of the Black Mountain Utility District hereby verify, state and affirm that I have read the foregoing, and the information contained therein is true and accurate to the best of my knowledge, information, and belief formed after a reasonable inquiry.

Ray Metcalfe

Mr. Ray Metcalfe, Operations Manager
Black Mountain Utility District

COMMONWEALTH OF KENTUCKY)

COUNTY OF HARLAN)

The foregoing was subscribed, acknowledged, and sworn to this 24 day of February, 20 15, before me by Ray Metcalfe, Operations Manager, Black Mountain Utility District.

M. Joyce Heck

NOTARY PUBLIC, STATE AT LARGE

ID#: _____

My Commission expires:

3-2-15

EXHIBIT A

Commonwealth of Kentucky

HOUSE OF REPRESENTATIVES

117 Gumwood RD
Middlesboro, KY 40965
rick.nelson@lrc.ky.gov



CAPITOL ANNEX ROOM 358
FRANKFORT, KENTUCKY 40601
OFFICE: (502) 564-8100, Ext. 612
FAX: (502) 564-3635

RICK NELSON
STATE REPRESENTATIVE

October 24, 2014

Ms. Debbie Milton
Kentucky Infrastructure Authority
Suite 340
1024 Capital Center Drive
Frankfort, Kentucky 40601

RE: WX21095005
House Bill 235 Reauthorization

Dear Ms. Milton:

I wanted to let you know that the legislative intent for the above-mentioned project was for the rehabilitation only of existing water lines. As State Representative I had personal knowledge that these allocated funds were to be used only for the rehabilitation of leaky, deteriorating water lines.

I would like for this project to be halted until such time as a determination can be made in regard to this issue. If you have any questions please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Rick G. Nelson".

Rick G. Nelson
State Representative
87th Legislative District

RGN/kkw

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KENTUCKY INFRASTRUCTURE
AUTHORITY

EXHIBIT B



KENTUCKY INFRASTRUCTURE AUTHORITY

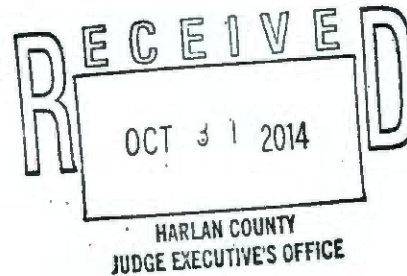
1024 Capital Center Drive, Suite 340
Frankfort, Kentucky 40601
Phone (502) 573-0260
Fax (502) 573-0157
<http://kia.ky.gov>

Steven L. Beshear
Governor

John E. Covington III
Executive Director

October 29, 2014

The Honorable Rick G. Nelson
State Representative
87th Legislative District
House of Representatives
Capitol Annex Room 358
Frankfort, Kentucky 40601



RE: Harlan County Fiscal Court – Black Mountain Utility District - Greenhill Water Line Rehabilitation Project Reauthorization and Reallocation - HB235 – \$325,000 - FY14

Dear Rep Nelson:

At the County's request, a Memorandum of Agreement was issued for the above grant for the project profile WX21095005 which included waterline extension along Woodard Branch to serve 8 customers and system wide rehabilitation/leak detection and repair.

After our phone discussion on October 24, 2014, followed by your letter on the same date regarding the legislative intent for these funds, we will halt processing the grant until such time as a determination can be made in regard to this issue.

Hopefully, you, the Fiscal Court and the Black Mountain Utility District can come to a mutual agreement regarding a rehabilitation project that suits the needs of the citizens in the Greenhill area of Harlan County.

If you have any questions or need further assistance, please call.

Sincerely,

Debby Milton
Financial Analyst

C: Honorable Joe Grieshop
Tim Schwendeman, LCADD
Commissioner Tony Wilder, DLG
John Covington, KIA
Amy Barnes, DLG