

SIDNEY B. DOUGLASS

ATTORNEY AT LAW
117 SOUTH SECOND STREET
P. O. DRAWER 839
HARLAN, KENTUCKY 40831-0839

Telephone (606) 573-1985

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December 19, 2012

Mr. Jeff Derouen, Executive Director
Public Service Commission
P.O. Box 615
Frankfort, KY 40601

RECEIVED

DEC 21 2012

**PUBLIC SERVICE
COMMISSION**

RE: NOTICE OF FILING
CASE # 2012-00095


Dear Director Derouen:

Enclosed please find a Notice of Filing in the above numbered case.

Charles Guyn, Accountant for Black Mountain Water District is working with Scott Lawless of your staff to submit the journal entries that will be used to record the merger.

Ray Metcalf, Manager of Black Mountain Utility District is working with Brent Kirtley of your staff to submit the Notice in Accordance with 807 KAR 5:011 Section 11.

Sincerely,


Sidney B. Douglass

CC: Ray Metcalf
Charles Guyn

SBD/dld

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
DEC 21 2012
PUBLIC SERVICE
COMMISSION

In the Matter of:

APPLICATION OF BLACK MOUNTAIN UTILITY)
DISTRICT AND GREEN HILLS WATER DISTRICT) CASE NO. 2012-00095

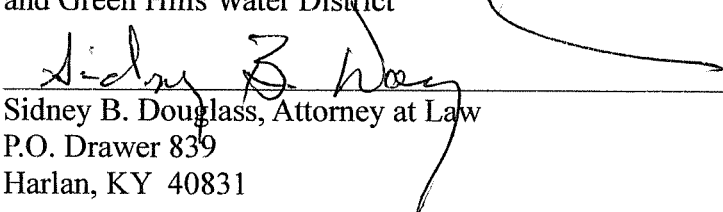
NOTICE OF FILING

Enclosed for filing please find true and correct copies of the following:

1. Motion passed by Green Hills Water District Board of Commissioners transfer assets and liability to merged District.
2. Resolution passed by Green Hills Water District Board that merger was effective December 1, 2012.
3. Motion passed by Black Mountain Utility District Board transferring all assets and liability to merged Black Mountain Utility District.
4. Resolution passed by Black Mountain Utility District Board that merger was effective December 1, 2012.
5. Resolution passed by merged Black Mountain Utility District Board that merger was effective December 1, 2012.
6. Copy of Conveyance of Deed of Easements and of Leases from Green Hills Water District to Black Mountain Utility District dated December 1, 2012 recorded in Deed Book 445 at page 326 in the Harlan County Clerk's Office, Harlan, Kentucky.

This 19th day of December, 2012

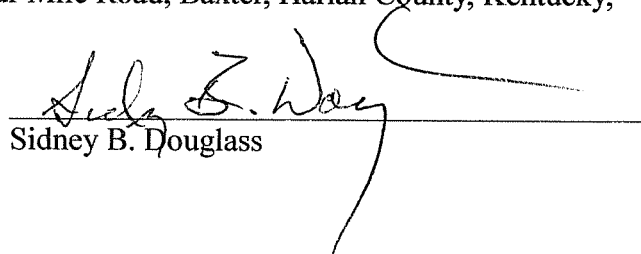
For the Joint Applicants Black Mountain Utility District
and Green Hills Water District



Sidney B. Douglass, Attorney at Law
P.O. Drawer 839
Harlan, KY 40831

CERTIFICATE OF SERVICE

I, Sidney B. Douglass certify that on this 19th day of December, 2012 I Mailed by U.S. Postal Service prepaid the original of the above Notice of Filing with enclosures to The Honorable Jeff Derouen, Executive Director, Kentucky Public Service Commission, P.O. Box 615, Frankfort, Kentucky, 40602 with true and correct copies delivered to the Black Mountain Water District and Green Hills Water District at their office at 609 Four Mile Road, Baxter, Harlan County, Kentucky, 40806.



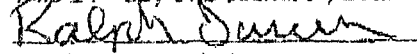
Sidney B. Douglass

Green Hills Water District 609 Four Mile Road Baxter, Ky. 40806

The following motion was made by Ronnie Cook, seconded by Clay Tolliver and unanimously passed by the Green Hills Water District at its last meeting on December 11, 2012.

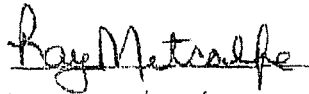
The motion confirms that all assets, property, customers, water rates and liabilities of the Green Hills Water district have been transferred to the merged Black Mountain Utility district.

This 14th day of December, 2012

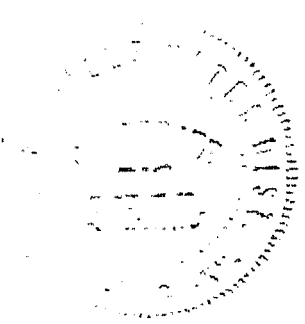


Ralph Turner, Chairman
Green Hills Water District

Attest:



Administrator



Green Hills Water District 609 Four Mile Road Baxter, Ky. 40806

The following Resolution was made by Clay Tolliver, seconded by Ronnie Cook, and unanimously passed by the Green Hills Water District at its meeting on December 11, 2012.

Resolution

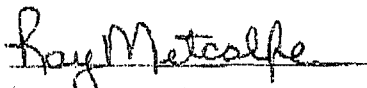
This Resolution will confirm that as of December 1, 2012, all conditions have been met, all documents have been executed and all actions have been taken to effect the Green Hills Water District merger with the Black Mountain Utility District in satisfaction of said two Districts merger agreement dated March 2, 2012 and the Kentucky Public Service Commission's order dated July 13, 2012

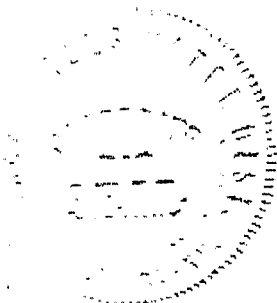
This 14th Day of December, 2012



Ralph Turner, Chairman
Green Hills Water District

Attest:


Administrator



**BLACK MOUNTAIN UTILITY DISTRICT**

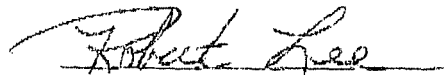
609 FOURMILE ROAD • BAXTER, KY 40806

Phone: 1-606-573-1277
Fax: 1-606-573-1276

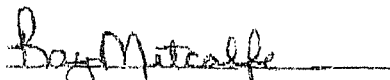
The initial meeting of the merged Board of Commissioners of Black Mountain Utility District and the Green Hills Water district, being the Black Mountain Utility District, was called to order at 4:40 p.m. on December 11, 2012 at the Black Mountain Utility District office located at 609 Four Mile Road Baxter, Harlan County, Kentucky with all of its eight members: Steve Sergent, Robert E. Lee, Raymond Cox, Johnny Perkins, Stanley Smith, Ralph Turner, Ronnie Cook and Clay Tolliver being present. A motion was made by Ralph Turner, seconded by Ronnie Cook and unanimously passed that the current officers of Black Mountain Utility District: Robert E. Lee, Chairman; Raymond Cox, Treasurer and Stanley Smith Secretary serve as the officers of the merged board until the regular election of officers next April. Robert E. Lee, newly elected chairman of the merged board presided over the rest of the meeting.

A motion was made by Raymond Cox, seconded by Johnny Perkins and unanimously passed that the rates for its customers, rules, regulations, classifications, administrative regulations, all property of whatever kind and liability of the Black Mountain Utility District, all property of whatever kind and liability of Green Hills Water Districts in addition to the rates for its customers are adopted and accepted by the merged districts.

A Resolution was made by Johnny Perkins, seconded by Ralph Turner and unanimously passed that as of December 1, 2012, all conditions have been met, all documents have been executed and all actions have been taken to effect the Green Hills Water District merger with the Black Mountain Utility District in satisfaction of the said two Districts merger agreement dated March 2, 2012 and the Kentucky Public Service Commission's order dated July 13, 2012.

This 14th day of December, 2012
Robert E. Lee, Chairman
Black Mountain Utility District

Attest:


Administrator



BLACK MOUNTAIN UTILITY DISTRICT



609 FOURMILE ROAD • BAXTER, KY 40806

Phone: 1-606-573-1277
Fax: 1-606-573-1276

The following Resolution was made by Johnny Perkins, seconded by Raymond Cox and unanimously passed by the Black Mountain Utility District with all of its members being present, at their meeting on December 11, 2012.

Resolution

This Resolution will confirm that as of December 1, 2012 all conditions have been met, all documents have been executed and all actions have been taken to effect the Green Hills Water District merger with the Black Mountain Utility District in satisfaction of said two districts merger agreement dated March 2, 2012 and the Kentucky Public Service commission's order dated July 13, 2012.

This 14th day of December, 2012

Robert E. Lee, Chairman
Black Mountain Utility District

Attest:

Administrator

**BLACK MOUNTAIN UTILITY DISTRICT**

609 FOURMILE ROAD • BAXTER, KY 40806

Phone: 1-606-573-1277
Fax: 1-606-573-1276

The following motion was made by Raymond Cox, seconded by Johnny Perkins, and unanimously passed by the Black Mountain Utility District, all members being present, at its meeting on December 11, 2012.

This motion confirms the rates, rules, regulations, classifications, administrative regulations; all property of whatever kind and liability of the Black Mountain Utility District plus the rates of the Green Hills Water District for its customers will be effective for the merged Black Mountain Utility District.

This 14th day of December, 2012Robert E. Lee, Chairman
Black Mountain Utility District

Attest:

Administrator

CONVEYANCE OF DEEDS OF EASEMENTS AND OF LEASES

This conveyance of deeds, easements and leases made and entered into this 1st day of December, 2012 by and between the Green Hills Water District, by and through its Chairman of its' Board of Commissioners, Ralph Turner, 609 Four Mile Road, Baxter, Kentucky 40806 hereinafter designated as the Grantor and the Black Mountain Utility District, by and through its Chairman of the Board of Commissioners, Bob Lee, 609 Four Mile Road, Baxter, Kentucky 40806, designated as Grantee:

Witnesseth: That for and consideration of the merger of the Grantor and Grantee, two water districts in Harlan County, Kentucky, in accord with the Parties joint agreement to merge pursuant to KRS 74:363 dated March 2, 2012 and in compliance to the Kentucky Public Service Commissions Order dated July 13, 2012, a copy of which is attached as Appendix A and incorporated by Reference, the receipt of which is hereby acknowledged, the Grantor does hereby grant, sell, bargain, convey and quit claim all its rights, title and interests to any land, easements and leases in Harlan County, Kentucky and being more particularly described as follows:

TRACK I

A parcel of land acquired by the Grantor from James and Callie Gross by deed recorded in Deed Book 325 at page 321 on August 8, 1996 and in satisfaction of an option to purchase recorded in miscellaneous Instruments Book 22 at page 366 on July 24, 1996 that is located on the northwest side of Kentucky Highway 221 in Harlan County, Kentucky and more particularly described as follows:

Beginning at an iron pin set, being the southwest corner of described tank site herein, said iron pin being located approximately N16°58'13"E, 222.51 feet from the southwest property corner of Grantor, marked by a chiseled "X" in a large rock (found); thence N04°34'10"E, 100.00 feet to an iron pin set; thence S85°25'50"E, 80.00 feet to an iron pin set; thence S04°34'10"W, 100.00 feet to an iron pin set; thence N85°25'50"W, 80.00 feet to the point of beginning and containing 0.184 acres by survey conducted by Walter L. Bowman, RLS #1804 on July 26, 1995.

There is also conveyed herein a general easement for the construction, maintenance, repair or replacement of a water line with the right of ingress, egress along and within said easement, being a strip of land 20 feet wide, 10 feet to each side and symmetrical about the center line being more fully described as follows:

Beginning at the intersection of a proposed access road and a gravel county road, said intersection being located approximately 910 feet southwest from Ky 221 along said county road, thence with the center of proposed access road, N62°42'50"W, 81.66 feet to a point;

Thence N45°58'37"W, 55.34 feet to a point;

Thence N66°52'51"W, 90.54 feet to a point;

Thence N57°56'16"W, 28.73 feet to a point;

Thence N09°51'43"W, 51.95 feet to a point;

Thence N33°40'58"E, 15.05 feet to a point;

Thence N62°08'32"E, 39.58 feet to a point;

Thence N85°14'26"E, 54.22 feet to a point in the west line of the above described tank site, said pin being located 46.45 feet from the southwest corner, as shown on a deed attachment plat prepared by Walter L. Bowman, Land Surveyor Registered #1084, of Mayes, Sudderth & Etheredge, Inc. dated July 26, 1995 recorded in Map Book _____ at page _____ in the Harlan County Court Clerk's Office.

TRACT II

The following parcels of land on the north side of Pine Mountain and above US Highway 421 in Harlan County, Kentucky acquired by the Grantor from the Harlan County Board of Education by deed recorded on June 12, 1978 in Deed Book 233 at page 608 and by deed of correction recorded April 22, 1982 in Deed Book 251 at page 460 and more particularly described as follows:

POOL SITE

"BEGINNING on a 10" walnut a common corner to Tract Number 1 and Tract Number 2 of the property of Harlan County Board of Education, Green Hill School; thence N 89-18 W 174.49 feet to an iron pin the second corner of this deed as shown on the map to be filed with this document; thence N 5-59 W 170.0 feet to an iron pin Corner No. 3;

thence N 72-18 E 175.0 feet to an iron pin, Corner No. 4 to this tract and a corner between Harlan County Board of Education and Denver Sparks at a southwest end of the Bledsoe Post Office; thence S 5-48 E 30.00 feet to an iron pin, Corner No. 5; thence N 17-00 E 60.00 feet to an iron pin in the east line of the Harlan County Board of Education property, Corner No. 6; thence S 5-48 E 178.10 feet to an iron pin, Corner No. 7; thence S 79-17 W 60.0 feet to the point of BEGINNING, containing 1.03 acres and being a part of tract 1 and 2 of the Harlan County Board of Education property."

TANK SITE

BEGINNING on an iron pin in the 5th corner of a water line easement and marked Corner No. 8 on the map; thence S 8-30 E 150.00 feet to an iron pin, Corner No. 9; thence S 81-30 W 100.00 feet to an iron pin, corner No. 10, a corner between Harlan County Board of Education and Wade Slusher; thence N 8-30 W 150.00 feet with the line of Wade Slusher to Corner No. 11; thence N 81-30 E 100.00 feet to the BEGINNING, containing 0.34 acres.

DESCRIPTION OF EASEMENT NO. 1

BEGINNING on a stake that bears S 5-59 E 132 feet from an iron pin the third corner of the deed to the pool site; thence S 60-07 W 215.70 feet with the center line of a 5 foot water line easement through tract No. 1 of the Harlan County Board of Education property; thence S 47-45 W 145.58 feet; S 71-05 W 115.80 feet; thence N 74-30 W 80.87 feet with the center line of said 5 foot water line easement to an iron pin in the northeast corner of a lot to be deeded to the Bledsoe Community for a water tank site (tank site referred to in this deed herein).

DESCRIPTION OF EASEMENT NO. 2

Running from Kentucky Highway 221 to the tank site, beginning on Corner No. 11 of the tank site and running with the west edge of the 5 foot easement and with the line between Harlan County Board of Education and Matilda Collins N 8-30 W 315.00 feet and being a 5 foot easement for the purpose of a water line.

Part of the above property is subject to a lease to Harlan County by the Grantor which lease is recorded in Lease Book 38 at Page 397 on October 24, 1997 and which lease of property at Bledsoe, Ky. near the Green Hills School is more particularly described as follows:

Beginning on a point in the south right of way of Ky. 221 West, and being in the boundary line of the Harlan County Board of Education; thence, running with a fence S 86°-53'-04" W, a distance of 101.62'; thence, S 85°-40'-59" W, a distance of 49.45'; thence, S 74°-59'-48" W, a distance of 37.78' to a point at the end of said fence; thence, S 75°-23'-04" W, a distance of 100.13' to a point at the east edge of the Green Hill School Parking Lot; thence with said east line of said parking area, S 15°-37'-02" E, a distance of 192.37' to a point in the top of a bank and in a tree line; thence with the top of bank and tree line the following calls: N 79°-21'-00" E, 11.21'; S 75°-24'-22" E, 92.15'; S 82°-51'-38" E, 118.06'; N 79°-18'-31" E, 31.45'; N 62°-08'-42" E, 43.03'; to a point in an existing fence line; thence, N 01°-17'-22" E, a distance of 109.14' with said fence; thence, N 08°-16'-18" W, a distance of 28.89'; thence, S 86°-18'-04" W, a distance of 54.49'; thence, N 00°-58'-55" E, a distance of 103.72' to the point of beginning.

TRACT III

A parcel of land with mineral rights excepted acquired by the Grantor from William T and Nancy A. Brown by deed recorded on May 6, 1981 in Deed Book 247 at page 320 which property is located on Straight Creek in Harlan County, Kentucky and more particularly described as follows:

Beginning on an iron stake near a stripmine highwall; thence S 85-30 E 60 feet to an iron stake; thence S 04-30 W 60 feet to an iron stake; thence N 85-30 W 60 feet to an iron stake; thence N 04-30 E 60 feet to the Beginning, consisting of .03 acre, more or less.

EASEMENTS

In addition to the above the Grantor conveys Grantee all its interests in easements to which it is entitled by proscription or public use and to the following easements that are described as follows:

Being a strip of land 20 feet wide, across the property of the Grantor, and in addition, a 5 foot strip of land adjacent to the perpetual easement on both sides, as a temporary construction easement, the center line of the easement transferred herein, being more fully described in the plan of Green Hills Water District, reference being made to said plans for the purpose of incorporating a more accurate description.

which right of way easements were acquired Grantor from the following:

Nelson Short and recorded on July 2, 1996 in Easement Book 5, at page 149
Harley Taylor et al and recorded on July 2, 1996 in Easement Book 5 at page 151
Melvin Taylor and recorded on July 2, 1996 in Easement Book 5 at page 153
Rice Thompson et al and recorded July 2, 1996 in Easement Book 5 at page 154
Eugene Short et al and recorded July 2, 1996 in Easement Book 5 at page 156
Cardelio Short and recorded July 2, 1996 in Easement Book 5 at page 158
Stanley Caldwell et al recorded July 2, 1996 in Easement Book 5 at page 160
David Brock et al and recorded July 2, 1996 in Easement Book 5 at page 162
Nelson Short and recorded July 2, 1996 in Easement Book 5 at page 164
Ronnie Caldwell et al and recorded September 16, 1996 in Easement Book 5 at page 234
Sandy K. Turner et al and recorded September 16, 1996 in Easement Book 5 at page 236
Billie Jean Searce and recorded September 16, 1996 in Easement Book 5 at page 238
Kermit Creech et al and recorded September 16, 1996 in Easement Book 5 at page 240
Nancy Boggs et al and recorded on September 16, 1996 in Easement Book 5 at page 243
Big Laurel Baptist Church and recorded on September 24, 1996 in Easement Book 5 at page 252
James E. Napier et al and recorded on December 11, 1997 in Easement Book 5 at page 378
Melissa Napier Holtkamp and recorded on January 27, 1998 in Easement Book 5 at page 410
Jerry W. Napier et al and recorded on January 27, 1998 in Easement Book 5 at page 413
Lena Howe and recorded on July 16, 1999 in Deed Book 343 at page 707
Charles Shepherd Jr. et al and recorded on July 22, 1999 in Deed Book 343 at page 707
Jack Hogue et al and recorded on June 13, 2000 in Deed Book 351 at page 130
Myrtle Turner and recorded on June 13, 2000 in Deed Book 351 at page 133
Dorothy Ashley and recorded on June 13, 2000 in Deed Book 351 at page 136
Hollis Boggs et al and recorded on June 13, 2000 in Deed Book 351 at page 139
Johnny Witt et al and recorded on June 13, 2000 in Deed Book 351 at page 142
Robert Hawkins et al and recorded on June 13, 2000 in Deed Book 351 at page 145
William Turner et al and recorded on June 13, 2000 in Deed Book 351 at page 148
Caroll Craycraft et al and recorded on June 26, 2000 in Deed Book 351 at page 418

ADDITIONAL EASEMENTS

A 20 foot water line easement granting ingress and egress and maintenance across the property of Richard Shane Saylor to Grantor as recorded on July 12, 1999 in Deed Book 343 at page 509.

A 20 foot water line easement granting ingress and egress and maintenance across the property of Chester and Maude Lewis to Grantor as recorded on June 13, 2000 in Deed Book 351 at page 151.

A water line easement across the property at Harlan County adjacent to the Dark Hollow Road and the Ollie Craycraft Road to Grantor from Harlan County Fiscal Court as recorded on June 11 1981 in Easement Book 2 at page 469.

LEASE AND EASEMENT

The Grantor conveys to the Grantee all its rights to a parcel of property located on the south side of Kentucky highway in Harlan County acquired by 99 year lease from Ann Wilder et al recorded on March 7, 1997 in Lease Book 38 at page 226 and which property is more particularly described as follows:

A certain tract or parcel of land lying on the south side of Kentucky 221 in Harlan County, Kentucky being more particularly described as follows:

Beginning at an iron pin set, being the most southwest corner of a proposed tank site, said pin lying N71 53'59"E, 843.05 feet from the intersection of the centerlines of Kentucky 221 and an existing county dirt and gravel road leading northeast, said intersection being located approximately 0.6 mile west of the intersection of KY 221 and US 421; thence N09 40'21"E, 100.70 feet to an iron pin set; thence S73 28'29"E, 56.98 feet to an iron pin set; thence S43 16'10"E, 40.00 feet to an iron pin set; thence S39 55'02"W, 87.00 feet; to an iron pin set; thence N73 28'55"W, 44.99 feet to the point of beginning containing 0.157 acres by survey conducted by Walter L. Bowman, RLS#1804 on December 8, 1994.

EASEMENT OF RIGHT OF WAY:

Access to this property is hereby granted to PARTY OF THE SECOND PART, entrance and exit, by the use of present road, leading from State Highway No. 221 to above described tract.

ASSIGNMENTS


The Grantor assigns to the Grantee all its rights and obligations in statements of assurances regarding completing a building for filter plant from coal severance economic fund and purchase and installation of three fire hydrants from Area Development Fund as recorded on December 7, 1978 in Miscellaneous Instruments book 14 at page 324 and on July 20, 1989 in Miscellaneous Book 18 at page 474.

All recordings referenced herein are recorded in the Harlan County Clerks Office in Harlan, Harlan County Kentucky.

TO HAVE AND TO HOLD THE SAME, together with all appurtenances thereunto belonging unto the Grantee, in fee simple, its successors and assigns forever, with covenant of general warranty.

IN WITNESS WHEREOF, THE GRANTOR has hereunto set its hand and seal the day and year first above written.

In witness whereof the Grantor, the Green Hills Water District by its Chairman Ralph Turner, with authority from its Board of Commissioners has hereunto set its hand and seal this 12th day of December, 2012.



Ralph Turner, Chairman
Green Hills Water District

CONSIDERATION CERTIFICATE

We, Grantor and Grantee to the conveyance by deed, easement and lease herein, the undersigned, chairmen of Green Hills Water District, and Black Mountain Utility District with authority from the Commissioners of their Boards, hereby certify that in the conveyance of the above described property by the Grantor to the Grantee, the consideration is the full consideration paid for the property and the estimate fair cash value of the real property conveyed is \$ 140,000.00. This consideration statement does not include the value of the utility easements and leases which are exempt under KRS 382.135.

Ralph Turner
Ralph Turner, Chairman
Green Hills Water District
Grantor

Robert Lee
Bob Lee, Chairman
Black Mountain Utility District
Grantee

ACKNOWLEDGED, SUBSCRIBED AND SWORN TO before me by Green Hills Water District by Green Hills Water District by and through Ralph Turner, its Chairperson of the Board of Commissioners on this 1 day of December, 2012.

Judy B. Way
NOTARY PUBLIC
Commission Expires: 2-20-14
ID# 413384

ACKNOWLEDGED, SUBSCRIBED AND SWORN TO before me by Black Mountain Utility District by and through, its Chairperson of the Board of Commissioners the 11 day of December, 2012.

Judy B. Way
NOTARY PUBLIC
Commission Expires: 2-20-14
ID# 413384



Steve L. Beshear
Governor

Leonard K. Peters
Secretary
Energy and Environment Cabinet

Commonwealth of Kentucky
Public Service Commission

211 Sower Blvd.
P.O. Box 615
Frankfort Kentucky 40602-0615
Telephone: (502) 564-3940
Fax: (502) 564-3460
psc.ky.gov

David L. Armstrong
Chairman

James Gardner
Vice Chairman

Linda Breathitt
Commissioner

July 13, 2012

Honorable Sidney B Douglass
117 South Second Street
P. O. Drawer 839
Harlan, KENTUCKY 40831-0839

CERTIFICATE OF SERVICE

RE: Case No. **2012-00095**

I, Jeff Derouen, Executive Director of the Public Service Commission, hereby certify that the enclosed attested copy of the Commission's Order in the above case was served upon the addressee by U.S. Mail on July 13, 2012

Executive Director

JD/ke
Enclosure

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BLACK MOUNTAIN UTILITY)
DISTRICT AND GREEN HILLS WATER DISTRICT) CASE NO. 2012-00095
FOR MERGER PURSUANT TO KRS 74.363)

ORDER

Black Mountain Utility District (“Black Mountain District”) and Green Hills Water District (“Green Hills District”) (collectively “Joint Applicants”) have applied for Commission approval of their proposed merger. Having reviewed the evidence of record¹ and being otherwise sufficiently advised, the Commission finds that:

1. Black Mountain District is a water district organized pursuant to KRS Chapter 74.
2. On June 7, 1984, the Commission authorized residents of the Black Mountain area of Harlan County, Kentucky to petition Harlan County Fiscal Court for the creation of Black Mountain District.²

¹ The Joint Applicants filed their application on March 14, 2012. No person has sought to intervene in this matter. On May 10, 2012, the Commission finding that, should KRS 278.020(6) apply to the proposed merger, the time for review pursuant to that statute should be extended to 120 days. Using informal procedures, Commission Staff has obtained and placed into the record additional information regarding the proposed merger. In view of the existing record and the lack of any request from the Joint Applicants for a hearing, the Commission finds that a hearing in this matter is not necessary and the case stands ready for decision.

² Case No. 8999, *In the Matter of the Application of Residents of Harlan County, Kentucky, For a Preliminary Hearing to Determine the Need for the Formation of Black Mountain Utility District* (Ky. PSC June 7, 1984).

3. On October 11, 1984, the Harlan County Judge/Executive ordered the creation of Black Mountain District.³

4. On May 8, 1986, Harlan County Fiscal Court affirmed and ratified the creation of Black Mountain District and established its territory to the Black Mountain area of Harlan County, Kentucky.⁴

5. Black Mountain currently owns and operates water distribution facilities that serve approximately 2,672 customers in Harlan County, Kentucky.⁵ It also operates sewage collection and treatment facilities in Closplint, Kentucky that serve approximately seven customers.⁶

6. A five-member board of commissioners manages and controls Black Mountain District.⁷

7. Black Mountain District purchases its water supply from the cities of Harlan, Kentucky and Evarts, Kentucky.⁸

8. For the year ended December 31, 2010, Black Mountain District purchased 189,061,600 gallons of water and sold 137,788,184 gallons of water.⁹

³ Application at 2.

⁴ Harlan County, Kentucky, Ordinance Relating to the Ratification, Confirmation, and Approval of the Creation of, and the Present Formation of Black Mountain Utility District (May 8, 1986).

⁵ *Annual Report of Black Mountain Utility District (Water Division) to the Kentucky Public Service Commission for the Year Ended December 31, 2010* (hereinafter "*Black Mountain Annual Report*") at 5, 27.

⁶ *Annual Report of Black Mountain Utility District (Sewer Division) to the Kentucky Public Service Commission for the Year Ended December 31, 2010* at 1, 12.

⁷ Application at 4.

⁸ *Black Mountain Annual Report* at 29.

⁹ *Black Mountain Annual Report* at 30.

9. As of December 31, 2010, Black Mountain District had total assets of \$10,213,710.¹⁰

10. As of December 31, 2010, Black Mountain District owned net utility plant of \$9,603,106.¹¹

11. As of December 31, 2010, Black Mountain District reported total debt and liabilities of \$2,255,882. This amount included current and accrued liabilities of \$168,035; bonded debt of \$1,417,300; and long-term loans of \$658,351 to the Kentucky Infrastructure Authority and \$12,195 to the Bank of Harlan.¹²

12. For the year ended December 31, 2010, Black Mountain District reported total operating revenues of \$1,225,783 and total operating expenses of \$1,438,221, for a net operating loss of \$212,438.¹³

13. As of December 31, 2010, Black Mountain employed eight full-time employees and one part-time employee.¹⁴

14. Green Hills District is a water district organized pursuant to KRS Chapter 74.

15. On September 2, 1976, the Commission authorized the residents of Harlan County, Kentucky to petition for the creation of Green Hills District.¹⁵

¹⁰ *Id.* at 7.

¹¹ *Id.*

¹² *Id.* at 9 and 22-23.

¹³ *Id.* at 11.

¹⁴ *Id.* at 5.

¹⁵ Case No. 6458, *Residents of Harlan County Community of Green Hills* (Ky PSC Sep. 2, 1976).

16. On September 19, 1977, Harlan County Court established Green Hills District and designed its territory as the portions of Harlan County north of Pine Mountain.¹⁶

17. Green Hills District currently owns and operates water distribution facilities that serve approximately 507 customers in Harlan and Leslie Counties, Kentucky.¹⁷

18. A three-member board of commissioners manages and controls Green Hills District.¹⁸

19. Green Hills District purchases its water supply from the city of Pineville, Kentucky.¹⁹

20. For the year ended December 31, 2010, Green Hills District purchased 33,513,000 gallons of water and sold 22,367,000 gallons of water.²⁰

21. As of December 31, 2010, Green Hills District had total assets of \$2,731,293.²¹

22. As of December 31, 2010, Green Hills District owned net utility plant of \$2,677,208.²²

¹⁶ Harlan County, Kentucky, Order Creating Green Hills Water District (Sept. 17, 1977).

¹⁷ *Annual Report of Green Hills Water District to the Kentucky Public Service Commission for the Year Ended December 31, 2010* (hereinafter "Green Hills Annual Report") at 5, 27

¹⁸ Application at 4.

¹⁹ *Green Hills Annual Report* at 26.

²⁰ *Id.* at 30.

²¹ *Id.* at 7. This amount does not include reported miscellaneous deferred debits of \$1,359.

²² *Id.*

23. As of December 31, 2010, Green Hills District reported total debt and liabilities of \$433,215. This amount included current and accrued liabilities of \$18,715 and bonded debt of \$414,500, which Rural Development holds.²³

24. For the year ended December 31, 2010, Green Hills District reported total operating revenues of \$222,184 and total operating expenses of \$274,293, for a net operating loss of \$52,109.²⁴

25. As of December 31, 2010, Green Hills District employed one full-time employee and two part-time employees.²⁵

26. In late January 2012, Green Hills District experienced a complete failure of its water distribution system and was unable to provide water service to its customers for a period of 10 days. As a result of this failure, the Harlan County Judge/Executive declared that a state of emergency existed in the areas that Green Hills District served.²⁶

27. On March 2, 2012, Black Mountain District and Green Hills District executed an agreement to consolidate the two water districts and provide for Black Mountain District to operate Green Hills District pending completion of the proposed consolidation. More specifically, this agreement provided that:

a. Green Hills District and Black Mountain District will merge. The resulting water district will be named "Black Mountain Utility District."

²³ *Id.* at 8 and 17.

²⁴ *Id.* at 9

²⁵ *Id.* at 5.

²⁶ Harlan County, Kentucky, Declaration of A Local State of Emergency (Feb. 1, 2012).

b. Upon execution of the agreement and pending Commission approval of the proposed merger, Black Mountain District will operate Green Hills District's water distribution system, maintain separate records for Green Hills District, and report monthly on its operation to Green Hills District's Board of Commissioners.

c. Within three months of the agreement's execution, Green Hills District's office, which is located in Bledsoe, Kentucky, will be closed.

d. Any funds that House Bill 410²⁷ and House Bill 608²⁸ allocated to Green Hills District or to Harlan County Fiscal Court for Green Hills District's benefit will be used exclusively to extend water mains from Baxter, Kentucky to a water tower on the crest of Pine Mountain and from that location to Little Shepherd Trail and down the south side of Pine Mountain to existing Green Hills District water mains.

e. The merged water district will assume responsibility for Green Hills District's bonds.

f. The merged water district will continue to assess Green Hills District's customers the rates that are currently set forth in Green Hills District's filed rate schedule. With the exception of special charges that the Commission authorizes, any future increases in the rates assessed to those customers will "be tied directly to increases imposed on . . . [existing Black Mountain District residential customers] with increases to be measured on an absolute dollar per gallon basis and not as a percentage."

g. Within five years of Commission approval of the proposed merger agreement, the merged water district will cause a rate study to be prepared.

²⁷ 2008 Ky. Acts Ch. 123.

²⁸ 2008 Ky. Acts Ch. 191.

h. The members of the Board of Commissioners of each water district will serve as members of the merged water district's board of commissioners for one year following the merger. The terms of all existing members will then lapse and the number of members of the merged water district's board of commissioners will be reduced to five. The Harlan County/Judge Executive will then fill these vacancies.

28. Since the execution of the merger agreement, Green Hills District's office, which is located in Bledsoe, Kentucky, has been closed.

29. Since the execution of the merger agreement, Green Hills District has terminated all of its employees. Black Mountain District has retained one of these employees.

30. The map set forth in the Appendix to this Order accurately depicts the facilities of public and municipal water utilities in Harlan County, Kentucky and the areas in which each utility provides water service.

31. The General Assembly has determined that "reduction of the number of operating water districts in the Commonwealth . . . [is] in the public interest, in that mergers of such districts will tend to eliminate wasteful duplication of costs and efforts, result in a sounder and more businesslike degree of management, and ultimately result in greater economies, less cost, and a higher degree of service to the general public; and that the public policy favors the merger of water districts wherever feasible."²⁹

32. The proposed merger is likely to produce greater economies of scale, reduce the cost of service, and improve service quality.

Based upon these findings of fact, the Commission makes the following conclusions of law:

²⁹ KRS 74 361(1).

1. Black Mountain District and Green Hills District are utilities subject to Commission jurisdiction.³⁰

2. KRS 278.020(5) provides that “[n]o person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission . . . without prior approval by the commission.”³¹

3. The proposed merger of the Joint Applicants into a single water district constitutes a transfer of control that requires Commission approval.

4. KRS 74.363(2) implies that Commission approval of a voluntary merger of two or more water districts is required.

5. Upon completion of the proposed merger, the merged water district will have the financial, technical, and managerial abilities to provide reasonable service to the Joint Applicants’ existing customers.

6. The proposed merger is consistent with the legislative finding of fact and policy set forth in KRS 74.361(1).

7. The proposed merger is in accordance with law and for a proper purpose and is consistent with the public interest.

³⁰ KRS 74.015; KRS 278.010(3)(d).

³¹ The Commission has previously found that KRS 278.020(6) is not applicable to a merger of two or more water districts. See Case No. 2007-00496, *Joint Application of Consumers Water District, Fancy Farm Water District, Hardeman Water District, and South Graves Water District For Approval of Merger and Formation of Graves County Water District* (Ky. PSC May 21, 2008) at 9, n.30. The merger of two or more water districts is effectively transferring control of these water districts’ property to a new entity. The new entity, however, does not exist until the merger. As there is no acquirer, KRS 278.020(6) is not applicable. See Case No. 2006-00197, *The Joint Petition of Kentucky-American Water Company, Thames Water Aqua Holdings GmbH, RWE Aktiengesellschaft, Thames Water Aqua US Holdings, Inc., and American Waterworks Company, Inc. for Approval of a Change in Control of Kentucky-American Water Company* (Ky. PSC Aug 14, 2006).

THIS INSTRUMENT PREPARED BY:

Sidney B. Douglass

Sidney B. Douglass
P.O. Drawer 839
Harlan, Kentucky 40831
(606) 573-1985

STATE OF KENTUCKY)

COUNTY OF HARLAN)

I, DONNA HOSKINS, Clerk of the County *in and* for the County and State aforesaid, certify that the foregoing Deed, was on the 17th day of December, 2012, at 3:15 ~~am~~ pm, lodged for record, whereupon the same with the foregoing and this Certificate, have been duly recorded in my office in Deed BOOK NO 445, Page 326.

Witness my hand this 17th day of December, 2012

DONNA HOSKINS, CLERK

BY: *Kimberly Parrott*, D.C.