

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

LEGAL QUALIFICATIONS OF TONI AKERS AND)
MICHAEL LITAFIK TO CONTINUE TO SERVE AS) CASE NO. 2009-00209
COMMISSIONERS OF MOUNTAIN WATER)
DISTRICT)

ORDER

Mountain Water District, a water district organized pursuant to KRS Chapter 74, owns and operates water distribution and sewage disposal facilities that serve approximately 16,450 customers in Pike County, Kentucky. It is a utility subject to Commission jurisdiction. KRS 278.015. Mountain Water District is administered by a five-member board of commissioners that controls and manages the affairs of the district.

KRS 74.455(1) provides:

From and after the creation and establishment of a water district and the appointment of water commissioners to manage the affairs of the district, and following the acquisition or construction by any duly created and established water district of a public water system, and the consequent establishment of regulatory jurisdiction over such water district by the Public Service Commission of Kentucky, the Public Service Commission may remove any water commissioner from his office for good cause, including, inter alia, incompetency, neglect of duty, gross immorality, or nonfeasance, misfeasance, or malfeasance in office, including without limiting the generality of the foregoing, failure to comply with rules, regulations, and orders issued by the Public Service Commission.

KRS 74.020(1)(a) requires that members of a water district's board of commissioners "be residents of the district, or of any incorporated or unincorporated

area served by the district in the county in which the district was originally established.” Any commissioner who moves “his residence outside of the jurisdictional limits . . . has disqualified himself and . . . [is] subject to removal.” OAG 76-381.

Toni Akers and Michael Litafik (“Respondents”) are members of Mountain Water District’s Board of Commissioners. Respondents have informed the Commission that they no longer reside within Mountain Water District’s territory or any area that it serves. See Exhibits A and B to this Order.

In light of Respondents’ admission, the Commission finds *prima facie* evidence exists that Respondents no longer reside within Mountain Water District’s territory and are presently disqualified from continued service as members of Mountain Water District’s Board of Commissioners and that, as a result of this disqualification, good cause exists for their removal from that Board.

IT IS THEREFORE ORDERED that:

1. Pursuant to KRS 74.455, this proceeding is initiated to determine whether Respondents presently reside within Mountain Water District’s territory and whether, if they no longer reside within the water district’s territory, they are disqualified from continued service as members of Mountain Water District’s Board of Commissioners and must be removed from that Board.

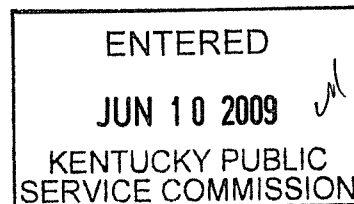
2. Within 10 days of service of this Order, each Respondent shall file with the Commission a written response to this Order and shall specifically admit or deny the allegation that he resides outside Mountain Water District’s territory. In this response, each shall further state whether he waives his right to a public hearing as provided in KRS 74.455(2).

3. Unless he waives his right to a public hearing in this matter, each Respondent shall appear at the Commission's offices at 211 Sower Boulevard on July 2, 2009 at 11:00 a.m., Eastern Daylight Time, for a public hearing on whether he presently resides within Mountain Water District's territory and whether, if he no longer resides within the water district's territory, he is disqualified from continued service as a member of Mountain Water District's Board of Commissioners and must be removed from that Board.

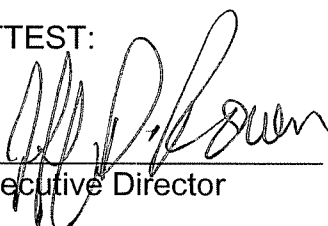
4. Pursuant to KRS 278.080, Richard Raff is designated as hearing examiner to conduct the scheduled hearing in this matter and to perform all actions necessary to ensure the orderly conduct of this hearing, to include administering oaths, receiving evidence, and ruling on motions and objections presented at this hearing.

5. A copy of this Order shall be served upon the County Judge/Executive of Pike County.

By the Commission



ATTEST:


Executive Director

Case No. 2009-00209



Steven 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

EXHIBIT

A

David L. Armstrong
Chairman

James W. Gardner
Vice Chairman

John W. Clay
Commissioner

April 15, 2009

Ms. Toni Akers
Mountain Water District
P.O. Box 392
Pikeville Kentucky 41502

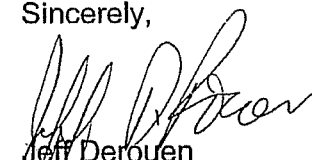
Certified Mail Receipt No. 70010360000206212099

Dear Ms. Akers:

The Public Service Commission is currently investigating allegations regarding your legal qualifications to serve as a member of the Board of Commissioners of Mountain Water District. It requests that you respond in writing within 10 days of receipt of this letter to the questions set forth on the enclosed sheet. It further requests that you provide to the Commission a copy of all resolutions of Pike County Fiscal Court and orders of the Pike County Judge Executive that establish or address the territorial boundaries of Mountain Water District.

Any inquiries regarding this letter should be directed to Gerald Wuetcher, Executive Advisor, at (502) 564-3940, Extension 259.

Sincerely,



Jeff Derouen
Executive Director

Enclosure

cc: Honorable Wayne T. Rutherford

QUESTIONS FOR TONI AKERS

1. What is the street address of your current place of residence?
(1) 192 Bowles Park Drive, A-4 Pikeville, KY 41501
2. How long have you resided at this location?
(2) 5 Years ±
3. When did you first reside at this location?
(3) 5 Years ±
4. Is your current residence located within the territory of Mountain Water District?
(4) No

Re: Territorial Boundaries of Mountain Water District

All territorial boundaries of Mountain Water District includes all of Pike County with the exception of the City of Pikeville,

Toni Akers
Name

4-20-09
Date

**EXHIBIT
B**

**MICHAEL R. LITAFIK
7617 UPPER JOHNS CREEK ROAD
PHELPS, KY 41553**

RECEIVED

APR 29 2009

PUBLIC SERVICE
COMMISSION

April 27, 2009

Gerald Wuetcher
Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
PO Box 615
Frankfort, KY 40602-0615

RECEIVED

APR 29 2009

GENERAL COUNSEL

RE: Public Service Commission Inquiry

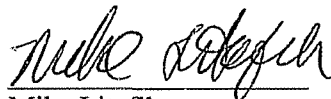
Dear Sir,

Your letter was received proposing four questions as per your attached correspondence:

1. I did sell my residence in September 2008 which was located in Phelps, KY 41553 and moved to 245 East Chloe Ridge, Pikeville, KY 41501. I currently own and operate several businesses within the Mountain Water District. Over half of my time is spent managing these entities. Nothing has basically changed as to my regular daily agenda, whether my residence is Phelps or Pikeville. I still receive my mail at 7617 Upper Johns Creek Road, Phelps, KY 41553.
2. I purchased the house in Pikeville in September, 2008.
3. I first resided at the Pikeville residence in the later part of September, 2008.
4. To the best of my knowledge the Pikeville residence is not within the territory of the Mountain Water District but I am not entirely clear as to their exact boundaries.

If you need additional information please contact me.

Sincerely,



Mike Litafik
Vice Chairman
Mountain Water Board of Commissioners



Steven L. Beshear
Governor

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David L. Armstrong
Chairman

James W. Gardner
Vice Chairman

John W. Clay
Commissioner

April 15, 2009

Mr. Mike Litafik
7617 Upper Johns Creek Road
Phelps, Kentucky 41553

Certified Mail Receipt No. 70010360000206212105

Dear Mr. Litafik:

The Public Service Commission is currently investigating allegations regarding your legal qualifications to serve as a member of the Board of Commissioners of Mountain Water District. It requests that you respond in writing within 10 days of receipt of this letter to the questions set forth on the enclosed sheet.

Any inquiries regarding this letter should be directed to Gerald Wuetcher, Executive Advisor, at (502) 564-3940, Extension 259.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Derouen".

Jeff Derouen
Executive Director

Enclosure

cc: Honorable Wayne T. Rutherford

QUESTIONS FOR MIKE LITAFIK

1. What is the street address of your current place of residence?
2. How long have you resided at this location?
3. When did you first reside at this location?
4. Is your current residence located within the territory of Mountain Water District?

Toni Akers
Chairperson
Mountain Water District
6332 Zebulon Highway
P.O. Box 3157
Pikeville, KY 41502-3157

Will Brown
Superintendent
Mountain Water District
6332 Zebulon Highway
P.O. Box 3157
Pikeville, KY 41502-3157

Mike Litafik
7617 Upper Johns Creek Road
Phelps, KY 41553