

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REQUEST TO FILL VACANCIES ON)	CASE NO.
MOUNTAIN WATER DISTRICT BOARD OF)	2014-00395
COMMISSIONERS)	

ORDER

On November 7, 2014, the Commission received a letter from Daniel P. Stratton, on behalf of Mountain Water District's Board of Commissioners, which: (1) advised the Commission of the existence of two vacancies on Mountain Water District's Board of Commissioners due to the expiration of two incumbents' term more than 90 days earlier; (2) requested that the Commission fill the vacancies; and (3) proposed that one of the incumbents, Lester "John" Collins, be reappointed.¹

On January 8, 2015, Pike County Judge/ Executive William M. Deskins submitted a letter to the Commission in which he nominated Michael R. Blackburn and Eddie Hurley to fill the two vacant positions on Mountain Water District's Board of Commissioners.²

Mountain Water District, a water district organized pursuant to KRS Chapter 74, owns and operates facilities that distribute water service to approximately 17,145

¹ Letter from Daniel P. Stratton to Jeff Derouen, Executive Director of the Kentucky Public Service Commission (Nov. 7, 2014).

² Letter from Pike County Judge/Executive William M. Deskins to Jeff Derouen, Executive Director of the Kentucky Public Service Commission (Jan. 8, 2015).

customers in Pike County, Kentucky.³ Additionally, Mountain Water District sells water at wholesale to Martin County Water District, Mingo County Public Service District in West Virginia, the city of Elkhorn, and the city of Jenkins.⁴ As of December 31, 2013, Mountain Water District had total assets of \$1,072,967⁵ and total operating revenues of \$8,330,750.⁶

A five-member board of commissioners administers Mountain Water District and has the statutory responsibility to “control and manage” the water district’s affairs.⁷ Pursuant to KRS 74.020(1)(a), the county judge/executive appoints water district commissioners with the approval of the county’s fiscal court, and the water district commissioners’ terms are staggered.⁸ However, KRS 74.020(4) provides that the Commission shall fill a vacancy on the board of commissioners “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.”

On December 22, 2014, the Commission initiated this proceeding to fill the two existing vacant positions on Mountain Water District’s Board of Commissioners. In that Order, we determined that the terms of Rhonda James and Lester “John” Collins ended on July 31, 2014, and that Commission records did not reflect the appointment of any

³ *Annual Report of Mountain Water District (Water District) to the Public Service Commission of Kentucky for the Calendar Year Ended December 31, 2013* at 11, 12, and 53.

⁴ *Id.* at 59.

⁵ *Id.* at 21.

⁶ *Id.* at 24.

⁷ KRS 74.020(1).

⁸ See KRS 74.020(1)(a). “Initial appointments shall be for terms of two (2), three (3), and four (4) years, as designated by the court.”

successors to Ms. James or Mr. Collins.⁹ Therefore, the Commission determined that we have the statutory responsibility to fill those vacancies.

To ensure notice to all persons with a significant interest in this matter, the Commission ordered that Mountain Water District be made a party in this proceeding. Commission Staff also mailed letters on December 22, 2014 to then-Pike County Judge/Executive Wayne T. Rutherford and then-Pike County Judge/Executive-elect William M. Deskins requesting any recommendations they had to fill the two vacancies. We further directed all nominees to provide information regarding their personal background and afforded all persons the opportunity to nominate additional individuals to fill the existing vacancies.

Mountain Water District's Board of Commissioners, through its representative Mr. Daniel P. Stratton, and Pike County Judge/Executive William M. Deskins have both submitted nominees for the two vacancies. The nominees, Lester "John" Collins, Michael R. Blackburn, and Eddie Hurley, have each responded to the Commission's directives to provide information.

In making our selection, the Commission must consider the totality of the circumstances, including the education, business and management experience, and personal history of the proposed candidates, and the existing financial and operating condition of the water district. Based upon our review of the evidence of record, we find no information to suggest that any of the candidates are unqualified to serve in the two designated positions. We further find that each of the candidates resides within

⁹ Order (Ky. PSC Dec. 22, 2014) at 1. We note that Mr. Collins' name was incorrectly written as "John L. Collins" in that Order, and Mr. Collins should have been referenced as "Lester 'John' Collins."

Mountain Water District's territory and possess adequate education, business skills, and experience to perform the duties of water district commissioner.

The Commission takes note of the recent action by William M. Deskins, Pike County Judge/Executive, to recommend the appointments of Mr. Blackburn and Mr. Hurley. While the law is clear that the Commission has the statutory duty and exclusive authority to fill the vacant position when a county judge/executive and county fiscal court fail to act within 90 days of the vacancy's creation, we afford significant weight to the recommendations of local elected officials. As we noted in Case No. 2011-00026, the Commission should defer

to the local elected officials in those instances where the local appointing and approval authorities have reached agreement on a candidate. Absent unusual circumstances that raise clear concerns about an agreed candidate's qualifications, such deference is appropriate because local officials generally have a better understanding of the candidates' qualifications and of the water district's needs and because these officials are directly accountable to the water district's customers through the ballot box.¹⁰

As the record contains no evidence to suggest that Mr. Blackburn and Mr. Hurley are unqualified to hold the positions, we find that Mr. Blackburn and Mr. Hurley should both be appointed to fill the two existing vacant positions on Mountain Water District's Board of Commissioners. We express no dissatisfaction with Mr. Collins. We simply conclude, as we have in previous cases, that absent unusual circumstances the Commission should defer to the recommendations of the local elected authority.

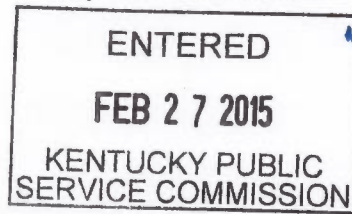
¹⁰ See Case No. 2011-00026, *Request to Fill Vacancy on the Green-Taylor Water District Board of Commissioners* (Ky. PSC Apr. 15, 2011), citing Case No. 2007-00493, *Request for Assistance in the Appointment of Breathitt County Water District Commissioners* (Ky. PSC Mar. 20, 2008).

IT IS THEREFORE ORDERED that:

1. Michael R. Blackburn is appointed to fill the existing vacancy on Mountain Water District's Board of Commissioners. His term shall expire on July 31, 2018.

2. Eddie Hurley is appointed to fill the existing vacancy on Mountain Water District's Board of Commissioners. His term shall expire on July 31, 2018.

By the Commission



ATTEST:



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