

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ELECTRONIC INVESTIGATION OF A	)	CASE NO.
POSSIBLE VACANCY ON THE BOARD OF	)	2021-00263
COMMISSIONERS OF BLACK MOUNTAIN UTILITY	)	
DISTRICT	)	

ORDER

Upon the Commission’s own motion, this case is established to determine who should be appointed to fill the vacancy of the expired terms on the board of commissioners for Black Mountain Utility District (Black Mountain District). The Commission made a finding that the vacancy existed in Case No. 2020-00042.<sup>1</sup> The case was closed on September 9, 2020, after the Black Mountain District commissioners named in that proceeding collectively resigned.<sup>2</sup>

The Commission’s Order of March 9, 2020, in Case No. 2020-00042, made the finding that when the vacancy created by the expiration of the term of Mr. Steve A. Sargent on February 16, 2019, had not been filled by May 17, 2019, the statutory duty and the exclusive authority to fill the vacancy shifted from the Harlan County Judge/Executive and Harlan County Fiscal Court to the Commission.<sup>3</sup> The statute which

---

<sup>1</sup> Case No. 2020-00042, *Black Mountain Utility District and Its Individual Commissioners, Raymond Cox, Charles Hyde, Robert Simpson, Steve Sargent, Ralph Turner, and General Manager, Raymond Metcalf Alleged Failure to Comply with KRS 278.140, 278.230, 807 KAR 5:006 SECTIONS: 4; 25(2); 26 (6) AND 807 KAR 5:066 SECTIONS: 6(2); 7, AND 17* (Ky. PSC Sept. 9, 2020).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 7.

addresses the appointment of members to the boards of commissioners of water districts, KRS 74.020(4), states:

Vacancies shall be filled by the same appointing authority which is empowered to make the original appointment. Vacancies resulting from cause other than expiration of the term shall be filled for the unexpired term only. Notwithstanding KRS 67.710, a vacancy resulting from the expiration of a term or the death, resignation, or removal of the incumbent shall be filled by the Public Service Commission 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.

While a county judge/executive and a fiscal court may reach an agreement on a candidate for the vacant position, they lack authority to fill the vacancy once it has remained unfilled for more than 90 days. Any action on their part to appoint and approve a candidate after that time constitutes only a recommendation to the Commission.<sup>4</sup>

To ensure a wide range of candidates is considered, the Commission will permit all interested parties the opportunity to nominate candidates for the positions. The Commission then will determine which of these candidates meet the constitutional and statutory requirements for the office of water district commissioner and, of those candidates who meet these requirements, which are best suited to sit on the Board of Commissioners. The Commission further directs that a copy of this Order be served upon the Harlan County Judge/Executive, the Harlan County Fiscal Court, the Harlan County Attorney, and Black Mountain District's Board of Commissioners.

Black Mountain District is a water utility district organized pursuant to KRS Chapter 74 that owns and operates a water distribution system, through which it provides retail

---

<sup>4</sup> See Case No. 2008-00395, *Request to Fill Existing Vacancies on the Board of Commissioners of Letcher County Water and Sewer District* (Ky. PSC Jan. 28, 2009) at 4–5.

water service to approximately 3,372 customers residing in Harlan County, Kentucky.<sup>5</sup> Black Mountain District also owns and operates a sewer collection system through which it provides sewer service to approximately seven customers residing in Harlan County, Kentucky.<sup>6</sup> Black Mountain District was organized in 1986 by the Harlan County Fiscal Court pursuant to KRS Chapter 74.<sup>7</sup> On July 13, 2012, the Commission approved the proposed merger of Green Hills Water District and Black Mountain District.<sup>8</sup> Black Mountain District's last adjustment of rates pursuant to 807 KAR 5:076 was approved on November 9, 2015.<sup>9</sup>

During the course of an investigation into the feasibility of merging Black Mountain District and Cawood Water District, to which Black Mountain District was a party, Commission Staff became aware of concerning deficiencies in Black Mountain District's reporting and record-keeping practices.<sup>10</sup> The Commission opened Case No. 2020-00042,<sup>11</sup> in order to investigate further. The Commission recently ordered Black Mountain

---

<sup>5</sup> *Annual Report of Black Mountain Utility District for Water to the Public Service Commission for the Calendar Year Ended December 31, 2019* at 12 and 49.

<sup>6</sup> *Annual Report of Black Mountain Utility District for Sewer to the Public Service Commission for the Calendar Year Ended December 31, 2019* at 25.

<sup>7</sup> 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).

<sup>8</sup> Case No. 2012-00095, *Application of Black Mountain Utility District and Green Hills Water District for Merger Pursuant to KRS 74.363* (Ky. PSC July 13, 2012) at 9.

<sup>9</sup> Case No. 2015-00088, *Alternative Rate Adjustment Filing of Black Mountain Utility District* (Ky. PSC Nov. 9, 2015).

<sup>10</sup> Case No. 2018-00068, *An Investigation into the Feasibility of Proposed Merger of Cawood Water District and Black Mountain Utility District Pursuant to KRS 74.361* (Ky. PSC Feb. 19, 2018).

<sup>11</sup> Case No. 2020-00042, *Black Mountain Utility District and Its Individual Commissioners, Raymond Cox, Charles Hyde, Robert Simpson, Steve Sargent, Ralph Turner, and General Manager, Raymond Metcalf Alleged Failure to Comply with KRS 278.140, 278.230, 807 KAR 5:006 Sections: 4; 25(2); 26 (6) and 807 KAR 5:066 Sections: 6(2); 7, and 17* (Ky. PSC Sept. 9, 2020).

District to file for an adjustment in base rates or file for an alternative rate filing pursuant to 807 KAR 5:076 by July 7, 2022.<sup>12</sup> The Commission finds that further proceedings are necessary to determine who should be appointed to fill the vacancies of the expired terms on the Black Mountain District Board of Commissioners.

IT IS THEREFORE ORDERED that:

1. Black Mountain District must publish, in the newspaper with the largest circulation in the county, the notice of a vacancy on Black Mountain District's Board of Commissioners attached as Appendix hereto and supply proof of publication to the Commission within five days of publication.

2. Within 20 days of the date of publication in the newspaper with the largest circulation in the county, any person who wishes to nominate a candidate to fill the vacancy on the Black Mountain District Board of Commissioners shall submit to the Commission an electronic copy, with reference to the Case No. 2021-00263, of the proposed candidate's qualifications, the candidate's name, address, telephone number, and electronic mail address.

3. Any party filing a paper with the Commission shall file an electronic copy in accordance with the electronic filing procedures set forth in 807 KAR 5:001, Section 8. Electronic documents shall be in portable document format (PDF), shall be searchable, and shall be appropriately bookmarked. The Commission directs the parties to the

---

<sup>12</sup> Case No. 2018-00068, *An Investigation into the Feasibility of Proposed Merger of Cawood Water District and Black Mountain Utility District Pursuant to KRS 74.361* (Ky. PSC July 7, 2021).

Commission's July 22, 2021 Order in Case No. 2020-00085<sup>13</sup> regarding filings with the Commission.

4. The Executive Director shall serve a copy of this Order upon the Harlan County Judge/Executive, the Harlan County Fiscal Court, the Harlan County Attorney, and Black Mountain District's Board of Commissioners.

5. Nothing contained herein shall prevent the Commission from entering further Orders in this matter.

---

<sup>13</sup> Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001, Section 8).

By the Commission



ATTEST:

  
Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2021-00263 DATED AUG 12 2021

Public Notice

Let it be known to the residents served by Black Mountain Utility District that there is a vacancy on the Black Mountain Utility District Board of Commissioners. The requirements to serve as a commissioner can be found at KRS 74.020. Any resident of the district served by Black Mountain Utility District interested in applying for the position shall send notification referencing PSC Case No. 2021-00263, with contact information and any qualifications to the Public Service Commission, via electronic mail to [psced@ky.gov](mailto:psced@ky.gov), within 20 days of the date of this publication.

\*Black Mountain Utility District  
609 Four Mile Road  
Baxter, KY 40806-8437