

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION INTO POSSIBLE	)	
VACANCIES ON THE BOARD OF	)	CASE NO.
COMMISSIONERS OF CUMBERLAND COUNTY	)	2023-00234
WATER DISTRICT	)	

ORDER

On January 25, 2024, Cumberland County Water District (Cumberland District) filed a motion, pursuant to KRS 278.400, requesting reconsideration of the Order entered January 5, 2024, finding two vacancies on Cumberland District’s Board of Commissioners and requesting an extension of time to provide notice of these vacancies.

LEGAL STANDARD

KRS 278.400, which establishes the standard of review for motions for rehearing, limits rehearing to new evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when “the evidence presented leaves no room for difference of opinion among reasonable minds.”<sup>1</sup> An order can only be unlawful if it violates a state or federal statute or constitutional provision.<sup>2</sup>

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<sup>1</sup> *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

<sup>2</sup> *Public Service Comm’n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm’n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

Pursuant to KRS 74.020(4) the Commission shall fill vacancies on boards of local water districts if the appropriate county judge executive, with approval of the fiscal court, has not filled the vacancy within 90 days following the vacancy. KRS 74.020(8)(b) provides that within 12 months of his or her initial appointment each commissioner of a water district shall complete 12 hours of instructional training. Further the statute provides that any commissioner who fails to complete this training shall forfeit his or her office and all right to discharge the duties of the office.

#### DISCUSSION AND FINDINGS

In the January 5, 2024 Order, the Commission found that a vacancy existed for a period of more than 90 days, due to a lack of evidence that Mark Vibbert attended water commissioner training within twelve months of his appointment.<sup>3</sup> At the time of the Order, the only information provided to the Commission of Mark Vibbert's initial appointment was

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<sup>3</sup> Order (Ky. PSC Jan. 5, 2024) at 4.

that he had been appointed in April 2012.<sup>4</sup> Mark Vibbert attended water commissioner training on April 9 and 10, 2013.<sup>5</sup>

Cumberland District stated that Mark Vibbert was appointed to fill the remainder of Earl Branham's term on or about March 13, 2012, and was reappointed to this position on May 9, 2017.<sup>6</sup> Cumberland District provided the Cumberland County Fiscal Court minutes from March 13, 2012, as further proof of Mr. Vibbert's appointment.<sup>7</sup> Cumberland District also provided Mr. Vibbert's reappointment from the Cumberland District Fiscal Court in minutes from May 9, 2017, and April 13, 2020, which had previously been provided to the Commission.<sup>8</sup>

In the January 5, 2024 Order, the Commission found that a vacancy existed for a period of more than 90 days, based on Sandy Hieneman's resignation on July 10, 2023, and statements by Cumberland District that the Cumberland County Fiscal Court had not filled the position.<sup>9</sup>

Cumberland District argued in its motion to reconsider that J.R. Thacker was timely appointed to Cumberland District's Board of Commissioners to replace Sandy

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<sup>4</sup> Cumberland District's Response to Commission Staff's First Request for Information (Staff's First Request), Exhibit 1.

<sup>5</sup> Case No. 2022-00244 *Electronic Alleged Failure of Cumberland Water District and Its Officers, Eric Carver, Sandy Hieneman, Troy Norris, Mark Vibbert, and Jay Cary and Its Manager, Matthew Dyer, to Comply with a Commission Order, KRS 278.990* (Ky. PSC July 5, 2023), Cumberland District's Response to Commission Staff's Post-Hearing Request for Information (filed Apr. 28, 2023), Item 3b, Exhibit C, Board minutes from April 1, 2013.

<sup>6</sup> Cumberland District's Motion to Reconsider (filed Jan. 25, 2024) at 1-2 and Exhibit 2.

<sup>7</sup> Cumberland District's Motion to Reconsider, Exhibit 1.

<sup>8</sup> Cumberland District's Motion to Reconsider, Exhibits 2, 4, and 5. Cumberland District previously provided this evidence in Cumberland District's Response to Commission Staff's Second Request for Information (Staff's Second Request), Attachment at 11 and 15-16.

<sup>9</sup> Order (Ky. PSC Jan. 5, 2024) at 4.

Hieneman.<sup>10</sup> Cumberland District provided Cumberland County Fiscal Court minutes from October 9, 2023, as further proof of Mr. Thacker's timely appointment.<sup>11</sup>

Cumberland District also asked for an extension of time for the deadlines imposed upon Cumberland District in the January 5, 2024 Order.<sup>12</sup>

Having considered the motion and the material at issue, the Commission finds that Cumberland District's motion for reconsideration should be denied. Based on the proof submitted by Cumberland District, Mark Vibbert's appointment on March 13, 2012, provides additional evidence that Mr. Vibbert did not attend water commissioner training within twelve months of his initial appointment as required by KRS 74.020(8)(b)<sup>13</sup> He attended training on April 9 and 10, 2013, more than 12 months after his appointment.

Based on the proof submitted by Cumberland District, JR Thacker was appointed to the Cumberland District Board of Commissioners on October 9, 2023, which was 91 days after Sandy Hieneman resigned on July 10, 2023. Because more than 90 days had passed since Sandy Hieneman resigned at the time that JR Thacker was appointed, his appointment is invalid.

The Commission notes that Cumberland District had access to the evidence provided in the motion to reconsider prior to the issuing of the Commission's January 5,

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<sup>10</sup> Cumberland District's Motion to Reconsider at 1-2.

<sup>11</sup> Cumberland District's Motion to Reconsider, Exhibit 3.

<sup>12</sup> Cumberland District's Motion to Reconsider at 1-2. Order (Ky. PSC Jan. 5, 2024) at 5, ordering paragraphs 1-3.

<sup>13</sup> KRS 74.020(8)(b) requires that "within twelve (12) months of his or her initial appointment, each commissioner shall complete the program of instruction described in paragraph (a) of this subsection. Except as provided in subsection (9) of this section, any commissioner who fails to complete the program within twelve (12) months of his or her initial appointment shall forfeit his or her office and all right to act in discharge of the duties of the office".

2024 Order, and that therefore, this evidence would not be considered new for the purpose of consideration for rehearing. However, as discussed, the evidence does not impact the Commission's findings in its January 5, 2024 Order nor the denial of the motion to reconsider.

The Commission finds that Cumberland District's request for an extension of time is granted. Cumberland District shall have an additional 20 days from the date of this Order publish, in a newspaper of general circulation in Cumberland, the notice of the vacancy on Cumberland District. Cumberland District shall also within five days of publication, supply proof of publication to the Commission.

IT IS THEREFORE ORDERED:

1. Cumberland District's motion for reconsideration is denied in part and granted in part.
2. Cumberland District's request to reconsider the vacancies declared on the Cumberland District Board of Commissioners is denied.
3. Cumberland District's request for an extension of time to file notice of vacancies is granted.
4. Within 20 days of the date of entry of this Order, Cumberland District shall publish, in a newspaper of general circulation in Cumberland, the notice of the vacancy on Cumberland District attached in the Appendix to the January 5, 2024 Order.
5. Within five days of the publication, Cumberland District shall file proof of publication in the record.
6. Within 20 days of the date of publication, any person who wishes to apply as a candidate to fill the vacancies on Cumberland District's Board of Commissioners

shall submit to the Commission, in writing, their name, address, telephone number, qualifications, and shall reference Case No. 2023-00234.

7. The remainder of the January 5, 2024 Order not in conflict with this Order remains in effect.

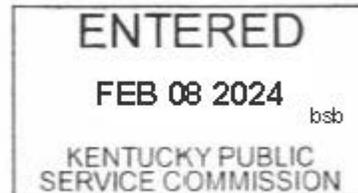
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PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner



ATTEST:

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