

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF THE VERIFIED	)	
JOINT APPLICATION OF BLACK MOUNTAIN	)	
UTILITY DISTRICT AND KENTUCKY-AMERICAN	)	CASE NO.
WATER COMPANY FOR A DECLARATORY	)	2026-00213
ORDER, OR, IN THE ALTERNATIVE, APPROVAL	)	
OF THE TRANSFER OF CONTROL OF SEWER	)	
ASSETS	)	

ORDER

On July 31, 2026, Kentucky-American Water Company (Kentucky-American) and Black Mountain Utility District (Black Mountain District) (collectively, Joint Applicants) filed an application for a declaratory order pursuant to 807 KAR 5:001, Section 19, or in the alternative, approval of an asset purchase agreement pursuant to KRS 278.020(6). There were no intervenors in this matter. The Joint Applicants responded to one request for information.¹

BACKGROUND

Kentucky-American

Kentucky-American is a wholly owned subsidiary of American Water Works Company, Inc. (American Water) and is engaged in the distribution and sale of water in its Central Division, consisting of Bourbon, Clark, Fayette, Harrison, Jessamine, Nicholas, Scott, and Woodford counties, Kentucky; its Northern Division, consisting of Gallatin,

¹ Kentucky-American's Response to Commission Staff's First Request for Information (filed September 4, 2026).

Owen, Grant, and Franklin counties, Kentucky; and the Southern Division, consisting of Bell, Clinton, Rockcastle, and Jackson counties, Kentucky.² Kentucky-American currently owns, operates, and maintains potable water production, treatment, storage, transmission, and distribution systems for the purpose of furnishing potable water for residential, commercial, industrial, and governmental users in its service territory.³ Kentucky-American is also engaged in the collection and treatment of wastewater in Franklin, Owen, Bourbon, and Clark counties, Kentucky.⁴

Black Mountain District

Black Mountain District is a water and utility district formed in 1986 pursuant to KRS Chapter 74 and operates under the jurisdiction of the Commission for the provision of water utility services to approximately 3,315 customers in Harlan County, Kentucky.⁵ Additionally, Black Mountain District provides sewer services to five residents in the community of Closplint in Harlan County, Kentucky.⁶

Case No. 2026-00097⁷

On July 10, 2026, the Commission approved Kentucky-American's acquisition of Black Mountain District's water assets pursuant to an April 10, 2026 Asset Purchase

² Application at 1.

³ Application at 1-2.

⁴ Application at 2.

⁵ Application at 2.

⁶ Application at 2.

⁷ Case No. 2026-00097 *Electronic Joint Application of Black Mountain Utility District and Kentucky-American Water Company for the Transfer of Control and Assets* (Ky. PSC Jul. 10, 2026).

Agreement.⁸ The acquisition did not include Black Mountain District's wastewater assets.⁹

PROPOSED ACQUISITION

On June 18, 2026, Joint Applicants reached an Asset Purchase Agreement wherein Kentucky-American would purchase the sewer assets from Black Mountain District that make up the Closplint cluster sewer system (Closplint cluster system).¹⁰ The Closplint cluster system is a sewage collection and disposal system consisting of wastewater collection and conveyance lines, a 7,000-gallon septic tank, and an effluent disposal bed that is permitted to serve six residential properties in the community of Closplint in Harlan County, Kentucky.¹¹ The Closplint cluster system was initially constructed to serve seven customers who would have been without sewer service due to the decommissioning of a nearby wastewater treatment plant.¹² Joint Applicants explained that the septic tank was permitted by the Harlan County Board of Health and was approved to serve up to six connections; however, there are now only five residents connected to the septic tank. Black Mountain District currently charges a small monthly flat rate fee of \$15.74 to the five residents.¹³ Joint Applicants noted that no new customers would be allowed to connect to the septic system because it is a "closed" system, meaning

⁸ Application at 2.

⁹ Application at 2.

¹⁰ Application at 2.

¹¹ Application at 2-3.

¹² Application at 3.

¹³ Application at 3.

it is closed to additional users and the public.¹⁴ Joint Applicants explained that Kentucky-American would continue to maintain and operate the system until there are no customers and would not charge the residents a fee for those operational costs if the Commission declares that the Closplint cluster system is not a jurisdictional sewer service.¹⁵ Additionally, Joint Applicants explained that due to the recent increase in the size of the septic tank, the tank would only need to be pumped out every five to ten years resulting in an average yearly operation and maintenance expenses for the assets would be minimal to zero.¹⁶

LEGAL STANDARD

Pursuant to 807 KAR 5:001, Section 19, the Commission may, upon application by a person substantially affected, “issue a declaratory order . . . with respect to the meaning and scope of an order or administrative regulation of the commission or provision of KRS Chapter 278.”¹⁷ An application for a declaratory order must:

- (a) Be in writing;
- (b) Contain a complete, accurate, and concise statement of facts upon which the application is based;
- (c) Fully disclose the applicant’s interest;
- (d) Identify all statutes, administrative regulations, and orders to which the application relates; and
- (e) State the applicant’s proposed resolution on conclusion.¹⁸

¹⁴ Application at 3.

¹⁵ Application at 3.

¹⁶ Application at 3.

¹⁷ 807 KAR 5:001, Section 19(1); see also Case No. 2020-00095, *Electronic Application of Kenergy Corp. for a Declaratory Order* (Ky. PSC Mar. 11, 2021), Order at 4–5 (noting that Commission may issue a declaratory order, in its discretion, with respect to the meaning and scope of an order, regulation, or statute if a request is made by a person substantially affected).

¹⁸ 807 KAR 5:001, Section 19(2).

Any factual allegation in an application for a declaratory order must be supported by an affidavit or verified.¹⁹ The Commission “may dispose of an application for a declaratory order solely on the basis of the written submissions filed”²⁰ or may allow for other actions, including additional discovery, to ensure that the record is complete.

KRS 278.010(3)(f) states, in relevant part, “[u]tility” means a regional wastewater commission established . . . who owns, controls, operates, or manages any facility used or to be used for or in connection with . . . [t]he connection, transmission, or treatment of sewage for the public, for compensation.

KRS 278.020(6) states:

No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has financial, technical, and managerial abilities to provide reasonable service.

DISCUSSION & FINDINGS

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that the Closplint cluster system is not a utility under KRS 278.010(3)(f) because Kentucky-American will not be operating the system “for compensation.” Kentucky-American’s only operational cost for the Closplint cluster system is the pumping of the septic tank every five to ten years. This results in a minimal or zero yearly operation and maintenance expense of the Closplint cluster system for Kentucky-American. Due to the minimal to zero yearly operation and maintenance expense, Kentucky-American

¹⁹ 807 KAR 5:001, Section 19(6).

²⁰ 807 KAR 5:001, Section 19(8); see also Case No. 2020-00095, Mar. 11, 2021, Order at 4–5 (noting that that Commission has discretion in whether to address an application for a declaratory order).

will not be charging the five customers a fee for operational costs. For these reasons, the Commission finds that the Closplint cluster system does not meet the definition of a utility under KRS 278.010(3)(f) and is therefore not subject to the jurisdiction of the Commission.

IT IS THEREFORE ORDERED that:

1. Joint Applicants application for a declaratory order is granted.
2. The Closplint cluster sewer system is not a utility under KRS 278.010(3)(f) and not subject to the jurisdiction of the Commission.
3. This case is closed and removed from the Commission's docket.

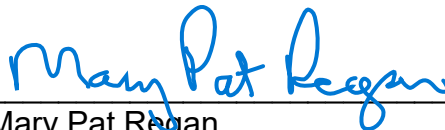
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Entered on this 21th day of September, 2026.

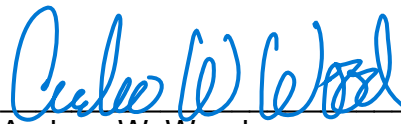
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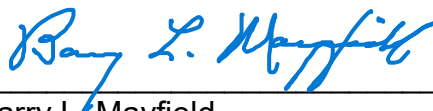
Angie Hatton
Chair



Mary Pat Regan
Vice Chair



Andrew W. Wood
Commissioner



Barry L. Mayfield
Commissioner

ATTEST:



Justin McNeil
Executive Director

Service List for Case 2026-00213

* L. Allyson Honaker
Honaker Law Office, PLLC
1795 Alysheba Way
Suite 1203
Lexington, KY 40509

* Anne Trout
Kentucky-American Water Company
2300 Richmond Road
Lexington, KY 40502

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

* Heather Temple
Honaker Law Office, PLLC
1795 Alysheba Way
Suite 1203
Lexington, KY 40509

* Lindsey Ingram
STOLL KEENON OGDEN PLLC
300 West Vine Street
Suite 2100
Lexington, KY 40507-1801

* Meredith L. Cave
Honaker Law Office, PLLC
1795 Alysheba Way
Suite 1203
Lexington, KY 40509

* Monica Braun
STOLL KEENON OGDEN PLLC
300 West Vine Street
Suite 2100
Lexington, KY 40507-1801

* Kentucky-American Water Company
2300 Richmond Road
Lexington, KY 40502

* Robert Prendergast
Kentucky-American Water Company
2300 Richmond Road
Lexington, KY 40502

* Denotes served by Email