

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REQUEST FOR APPOINTMENT OF)	
COMMISSIONERS FOR KENTUCKY)	CASE NO. 2012-00173
TURNPIKE WATER DISTRICT)	

ORDER

Bullitt County Judge/Executive Melanie J. Roberts has requested that the Commission fill vacancies on Kentucky Turnpike Water District that have existed for more than 90 days. By this Order, the Commission fills those vacancies.

Kentucky Turnpike Water District, a water district organized pursuant to KRS Chapter 74, was created in January 1965 by Bullitt County Court to provide water service to certain portions of northern Bullitt County, Kentucky.¹ In 1968 Kentucky Turnpike Water District, which was originally named Salt River Water District No. 2, entered a 40-year lease agreement under which it agreed to construct a water distribution system within its territory and then to lease that system to Louisville Water Company in exchange for Louisville Water Company's agreement to supply, operate and maintain the distribution system on the water district's behalf.²

¹ Bullitt County Court, Order Creating District (Jan. 9, 1965). Kentucky Turnpike Water District was originally named Salt River Water District No. 2. Bullitt County Court changed the water district's name to Kentucky Turnpike Water District in 1967. See Case No. 4702, *Application of Kentucky Turnpike Water District for (1) a Certificate of Public Convenience and Necessity, (2) Order Authorizing Issue of Bonds and (3) Order Authorizing Rate Tariff* (Ky. PSC Sept. 25, 1967).

² See Case No. 4702, *Application of Kentucky Turnpike Water District for (1) a Certificate of Public Convenience and Necessity, (2) Order Authorizing Issue of Bonds and (3) Order Authorizing Rate Tariff* (Ky. PSC Nov. 8, 1968). For a copy of Lease Agreement, see App. Ex. C, Case No. 2000-306, *Application of Louisville Water Company for Approval of Merger and Ownership of Kentucky Turnpike Water District* (Ky. PSC filed June 15, 2000).

In 1992 Kentucky Turnpike Water District and Salt River Water District No. 1 voluntarily merged. Salt River Water District No. 1, whose territory covered certain portions of southern Bullitt County was absorbed into Kentucky Turnpike Water District and became known as Kentucky Turnpike Water District Division 2.³ The merger agreement expressly provided that the merged district would be operated by a five-member Board of Commissioners, and that within two years of the merger the membership on the Board would be reduced to three members.⁴ According to Commission records, the Board consisted of only three members by 1995.

As of December 31, 1995,⁵ a three-member board of commissioners administered Kentucky Turnpike Water District and had the statutory responsibility to “control and manage” the water district’s affairs.⁶ The County Judge/Executive of Bullitt County appointed the water district commissioners with the approval of the Bullitt County Fiscal Court.⁷ Pursuant to KRS 74.020(1), the terms of the members of a water district’s board of commissioners were staggered.⁸

On August 11, 2000, Kentucky Turnpike Water District entered into an agreement with Louisville Water Company (“Merger Agreement”) to terminate its Lease

³ Case No. 92-169, *Salt River Water District and Kentucky Turnpike Water District Joint Petition for Approval of Merger Agreement and Retail Rate Adjustment* (Ky. PSC Feb. 10, 1993) at 3.

⁴ *Id.* at 4.

⁵ *Annual Report of Kentucky Turnpike Water District (Division 1) to the Public Service Commission of Kentucky for the Year Ended December 31, 1995* at 6; *Annual Report of Kentucky Turnpike Water District (Division 2) to the Public Service Commission of Kentucky for the Year Ended December 31, 1995* at 6.

⁶ KRS 74.020(1).

⁷ KRS 74.020(1)(b).

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.”)

Agreement and to transfer all of its assets and liabilities to Louisville Water Company.⁹ On September 6, 2000, the Commission approved the proposed transfer.¹⁰ The transfer was completed on September 29, 2000.¹¹

Following the transfer of the assets, neither Bullitt County Fiscal Court nor Kentucky Turnpike Water District took action to dissolve the water district or to fill vacancies on Kentucky Turnpike Water District's Board of Commissioners as they occurred. Attention instead focused upon the Bullitt County Advisory Board, a body whose creation the Merger Agreement required and whose purpose was to "provide advice and counsel to the LWC [Louisville Water Company] Board of Water Works . . . on issues related to KTWD [Kentucky Turnpike Water District] service areas and the Bullitt County Water Improvement Program until that program had been completed."¹² The Merger Agreement designated the then-serving members of Kentucky Turnpike Water District's Board of Commissioners as the first members of the Bullitt County Advisory Board and provided that each was to serve until the expiration of his term as water district commissioner. Thereupon, the Bullitt County Judge/Executive would

⁹ For the an executed version of the Merger Agreement, see App. Ex. F, Case No. 2000-306, *Application of Louisville Water Company for Approval of Merger and Ownership of Kentucky Turnpike Water District* (Ky. PSC filed Aug. 15, 2000).

¹⁰ Application of Louisville Water Company for Approval of Merger and Ownership of Kentucky Turnpike Water District (Ky. PSC Sept. 6, 2000).

¹¹ Letter from Laura M. Douglas, Vice-President and General Counsel, Louisville Water Co., to Martin J. Huelsmann, Chairman, and Deborah Eversole, General Counsel, Kentucky Public Service Commission (Oct. 25, 2000).

¹² Merger Agreement § 10K. As part of the consideration for the transfer, Louisville Water Company agreed to install over a 10-year period certain system improvements within Kentucky Turnpike Water District's territory. Among these improvements was the Bullitt County Improvement Program, which involved the construction of backbone water mains and distribution mains to unserved public roads within 10 years of the development of an extension plan. See Merger Agreement § 2B and Merger Agreement Ex. H.

appoint his successor. Members of the Bullitt County Advisory Board were to receive a monthly expense stipend of \$100 and liability insurance coverage.¹³

On February 21, 2012, Bullitt County Fiscal Court and Louisville Water Company executed an "Amendment to the Merger Agreement." Noting that they had fulfilled the terms of the Merger Agreement, Bullitt County Fiscal Court and Louisville Water Company agreed to several future actions regarding the provision of water service in Bullitt County, of which the dissolution of Kentucky Turnpike Water District was one.¹⁴

On May 1, 2012, Bullitt County Judge/Executive Melanie J. Roberts requested that the Commission fill the existing vacancies on Kentucky Turnpike Water District's Board of Commissioners.¹⁵ She nominated three persons as candidates for the vacancies. She further advised the Commission that appointment of commissioners was the first step toward dissolution of Kentucky Turnpike Water District. Upon their appointment, these commissioners would be requested to evaluate the merits of dissolving the water district.

On July 11, 2012, we initiated this proceeding to fill the existing vacancies. To ensure notice to all persons with a significant interest in this matter, the Commission ordered that Bullitt County Judge Executive Roberts and the three persons whom she nominated for commissioner be made parties to this proceeding. We also directed the three nominees to provide information regarding their personal background and

¹³ Merger Agreement Ex. A.

¹⁴ Minutes of the Regular Session of Bullitt County Fiscal Court Held on Feb. 22, 2012, available at <http://www.bullittcounty.ky.gov/uplimg/documents/2.21.2012%20Minutes.pdf> (last visited Jan. 3, 2013).

¹⁵ Letter from Melanie J. Roberts, Bullitt County Judge/Executive, to Gerald Wuetcher, Executive Advisor, Public Service Commission (May 1, 2012).

Judge/Executive Roberts to provide information regarding Kentucky Turnpike Water District's boundaries and Bullitt County Fiscal Court's efforts to fill the vacant positions.

On September 19, 2012, Judge/Executive Roberts provided the requested information. With the unanimous agreement of Bullitt County Fiscal Court,¹⁶ she also nominated a second slate of potential commissioners: Rudy Hawkins, William Higgins and Glen Gibson.¹⁷ With her response, Judge/Executive Roberts also provided the information on the second slate of potential commissioners that had previously been requested of the first slate.

Pursuant to KRS 74.020(1)(a), a county judge/executive appoints water district commissioners with the approval of the county's fiscal court. KRS 74.020(4), however, provides that the Commission shall fill a vacancy on the board of commissioners "if, within ninety (90) days following the expiration of the term, the vacancy has not been filled by the appropriate county judge/executive with approval of the fiscal court."

Notwithstanding that appointment authority has been vested in the Commission in such circumstances, deference should be afforded to local officials. We have previously noted:

While the Commission has exclusive authority to fill vacancies that exist for 90 days or more, we will 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'

¹⁶ Resolution No. 12-14 of Bullitt County Fiscal Court (Sept. 18, 2012).

¹⁷ The first slate of potential commissioners had earlier advised Judge/Executive Roberts that they wished to withdraw from consideration for the positions. Pursuant to the terms of the Commission's Order of July 11, 2012, the failure of each nominee to file the requested information in a timely manner was deemed as notice that he does not wish to be considered for appointment to Kentucky Turnpike's Board of Commissioners.

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.¹⁸

Based upon the record and the evidence that the candidates are residents of Kentucky Turnpike Water District's territory, the Commission finds that the candidates satisfy the sole statutory requirement to be appointed.¹⁹ The Commission further finds that that each of the candidates possesses adequate education, business skills, and experience to perform the duties of water district commissioner. Accordingly, the Commission finds that each candidate should be appointed and approved to fill the vacant positions for the recommended terms.

We further find the record is unclear as to the proper term for each appointment. The proposed terms do not appear to have taken into consideration the timing or length of prior terms.²⁰ Although the positions have been vacant for a significant period of time, neither the Bullitt County Judge/Executive nor Fiscal Court has presented any authority to support the proposed term periods. Moreover, it appears that the Bullitt County Judge/Executive and Fiscal Court may still possess the authority to fill one of the vacancies, since that position's term appears to have ended on December 31, 2012. Clearly only the Commission, however, can fill the remaining vacancies. Notwithstanding this uncertainty, we recognize that the purpose of these appointments

¹⁸ Case No. 2007-00493, *Request for Assistance in Appointment of Breathitt County Water District Commissioners* at 4-5 (Ky. PSC Mar. 20, 2008).

¹⁹ KRS 74.020(1)(a).

²⁰ According to Kentucky Turnpike Water District's last financial and statistical report, which it filed in 2000, the terms of Kentucky Turnpike Water District's three commissioners expired on December 31, 2000; June 30, 2001; and December 31, 2001, respectively. As KRS 74.020(1) provides for a term of four years, the new terms should expire on December 31, 2012; June 30, 2013; and December 31, 2013, respectively.

is to bring about the water district's dissolution and have accepted the terms that Bullitt Fiscal Court proposes.

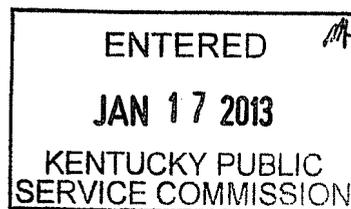
IT IS THEREFORE ORDERED that:

1. William Higgins is appointed and approved to fill an existing vacancy on Kentucky Turnpike Water District's Board of Commissioners. His term shall expire on August 31, 2014.

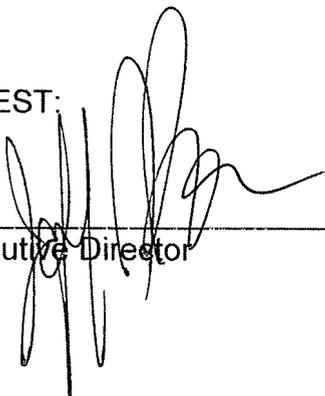
2. Glen Gibson is appointed and approved to fill an existing vacancy on Kentucky Turnpike Water District's Board of Commissioners. His term shall expire on August 31, 2015.

3. Rudy Hawkins is appointed and approved to fill an existing vacancy on Kentucky Turnpike Water District's Board of Commissioners. His term shall expire on August 31, 2016.

By the Commission



ATTEST:



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