

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

ELECTRONIC INVESTIGATION INTO THE	)	CASE NO.
FINANCIAL AND OPERATING CAPACITY	)	2023-00235
OF BLACK MOUNTAIN UTILITY DISTRICT	)	

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**BLACK MOUNTAIN UTILITY DISTRICT’S POST-HEARING BRIEF**

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Comes now, Black Mountain Utility District (“Black Mountain”), pursuant to the Kentucky Public Service Commission’s (“Commission”) March 28, 2024 Order in this proceeding setting forth the post-hearing procedural schedule and the deadline for submitting a brief in this matter, and respectfully states as follows:

**INTRODCUTION**

On October 9, 2023, the Commission initiated an investigation in to the financial and operating capacity of Black Mountain.<sup>1</sup> Specifically, the Commission found a *prima facie* violation of KRS 278.300 due to the issuance of indebtedness that was refinanced for more than six (6) years.<sup>2</sup> The Commission also noted that Black Mountain has historically high water loss and that commissioners have not been attending water commissioner training.<sup>3</sup> The Commission stated these issues along with the *prima facie* violation of KRS 278.300 raised concerns about the financial and operating capacity of Black Mountain.

Throughout the proceedings, Black Mountain filed multiple responses to Commission

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<sup>1</sup> Case No. 2023-00235, October 9, 2023 Order.

<sup>2</sup> October 9, 2023 Order at 4.

<sup>3</sup> October 9, 2023 Order at 4-5.

Staff's requests for information.<sup>4</sup> Black Mountain also provided proof that several of the board members attended the required training during the pendency of this proceeding.<sup>5</sup> The Commission scheduled a formal hearing and Black Mountain presented several witnesses at the hearing, including: Grant Cooper, manager; Shawn Miller, Chairman; Dewayne William, Vice-Chairman; Chad Brock, board member; Brandon Shepherd, board member.<sup>6</sup> Additionally, Harlan County Judge Executive Dan Mosely testified in the formal hearing.<sup>7</sup>

### **ARGUMENT**

In 2020, the Commission established a case to investigate Black Mountain's individual commissioners and its general manager for failure to comply with KRS 278.140, KRS 278.230 and various regulations.<sup>8</sup> In July 2020, the entire Black Mountain board of directors resigned and there was no general manager.<sup>9</sup> Since July 2020, Black Mountain District has been appointed a new board.<sup>10</sup> Black Mountain also hired a new general manager in 2021.<sup>11</sup>

At the time of the resignations, Black Mountain was in poor financial condition. The board

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<sup>4</sup> Black Mountain District's Response to Commission Staff's First Data Request (filed Dec. 27, 2023); Black Mountain District's Response to Commission Staff's Second Data Request (filed Feb. 2, 2024); Black Mountain District's Supplemental Responses to Staff's First Data Requests (filed March 22, 2024); and Black Mountain District's Post Responses to Commission Staff's Post-Hearing Request for Information (filed April 12, 2024).

<sup>5</sup> Notice of Attending Water Training (filed Nov. 10, 2024).

<sup>6</sup> Hearing Video Testimony (HVT) of the March 26, 2024 Hearing.

<sup>7</sup> HVT at 09:11:01.

<sup>8</sup> Case No. 2020-00042, *Black Mountain Utility District and its Individual Commissioners, Raymond Cos, Charles Hyde, Robert Simpson, Steve Sergent, Ralph Turner, and General Manager Raymond Metcalf's Alleged Failure to Comply with KRS 278.140, 278.230, 807 KAR 5:0006 Sections: 4; 25(2); 26(6) and 807 KAR 5:066 Sections: 6(2); 7, and 17*, March 9, 2020 Order.

<sup>9</sup> September 9, 2020 Order, Attachment A.

<sup>10</sup> Black Mountain District's Response to Commission Staff's First Request for Information, Item 4.

<sup>11</sup> HVT at 10:32:32.

members had no records and no information about anything the prior board had done.<sup>12</sup> The new board received a shoe box containing the limited financial records of the utility.<sup>13</sup> After beginning to delve into the issues plaguing Black Mountain, the new board learned the Harlan County Fiscal Court merged two failing systems with Black Mountain, Green Hills and Wallins.<sup>14</sup> These two systems contributed to the large water loss and financial issues experienced by Black Mountain.<sup>15</sup> Due to the diligent management of the new board members and general manager, Black Mountain has been able to reduce water loss in Green Hills.<sup>16</sup> Black Mountain has hired employees to work on leak detection full time to further reduce water loss and place the district in a better financial position.<sup>17</sup> Black Mountain also provided information that one of the sewer systems is costing an extraordinary amount of money each month for the district, but Black Mountain has now begun the process of changing the system to save the utility money.<sup>18</sup>

Black Mountain acknowledged that an area of its system has had issues with water supply.<sup>19</sup> Black Mountain is a distribution only water utility. One area of its system must rely on the City of Evarts to supply water for a small portion of its system.<sup>20</sup> There is no option to purchase water from any other supplier to for that area of its system.<sup>21</sup> Black Mountain is in constant

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<sup>12</sup> HVT at 12:25:01.

<sup>13</sup> HVT at 12:26:47.

<sup>14</sup> HVT at 10:56:04.

<sup>15</sup> HVT at 10:56:04.

<sup>16</sup> HVT at 10:38:00.

<sup>17</sup> HVT at 10:59.

<sup>18</sup> HVT at 12:39.

<sup>19</sup> Black Mountain's Response to Commission Staff's First Request for Information, Items 10, 11, and 12.

<sup>20</sup> Black Mountain's Response to Commission Staff's First Request for Information, Item 12.

<sup>21</sup> HVT at 9:42 – 9:46 and HVT at 10:35.

communication with the City of Evarts regarding the water supply and Black Mountain ensures its tank in the area is full at all times in case of a water shortage.<sup>22</sup>

Due to the resignation of the entire board in 2020, the current board members were not aware of the line of credit or loan when they were appointed. Black Mountain provided evidence that there have been multiple lines of credit, beginning in 2015, and all have been paid off in approximately one year except a line of credit that was issued on August 31, 2017.<sup>23</sup> That line of credit was modified to extend the maturity date until June 27, 2020.<sup>24</sup> The Harlan County Fiscal Court provided the collateral for the initial line of credit and required Black Mountain to repay the Fiscal Court at 2.3% interest.<sup>25</sup> This line of credit originated prior to the current board being appointed.

Additionally, Black Mountain entered into a principal and interest loan on July 1, 2020, for a term of 13 months. The loan has been modified several times and the final maturity date of the principal and interest loan is September 1, 2024. This loan was not initially for more than two years and was not renewed for more than six years.<sup>26</sup>

Black Mountain's board members testified that they did not ask the accountant how bills were being paid, but after attending Commission Water Commissioner Training, they are now asking.<sup>27</sup> Black Mountain acknowledged it will seek approval from the Commission if any loan

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<sup>22</sup> HVT at 11:36 – 11:40.

<sup>23</sup> Response to Commission Order (filed Nov. 17, 2023).

<sup>24</sup> Response to Commission Order.

<sup>25</sup> HVT at 9:13.

<sup>26</sup> Response to Commission Order at 2-3.

<sup>27</sup> HVT at 12:28.

or line of credit is contemplated in the future.<sup>28</sup>

All of the Black Mountain board members testified they did not know there was a requirement to complete 12 hours of water commissioner training within one year of appointment.<sup>29</sup> The board members testified that when they were appointed, none were informed by anyone they were required to go to training.<sup>30</sup> The Harlan County Judge Executive testified that he has been the Judge Executive since 2015 and has appointed multiple board members to both water districts in Harlan County.<sup>31</sup> The Judge Executive further explained he had never been made aware of the requirement for board members to attend training until the Commission initiated this case.<sup>32</sup> Since the hearing in this matter, Chad Brock has tendered his resignation to the Black Mountain board. That resignation was accepted at the May board meeting and a letter notifying the Commission of the vacancy as well as a letter to the Harlan County Judge Executive regarding the vacancy were sent on May 23, 2024.<sup>33</sup>

At this time Shawn Miller, Brandon Shepherd, Bill Clem, and Shawn Miller have attended the twelve hours of water training required for new commissioners.<sup>34</sup> Brandon Shepherd and Dwayne Williams attended on October 9-10, 2023.<sup>35</sup> Shawn Miller and Bill Clem attended on

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<sup>28</sup> HVT at 12:29.

<sup>29</sup> HVT at 12:29, 12:31, 12:42, 12:44, and 12:51.

<sup>30</sup> HVT at 12:29, 12:31, 12:42, 12:44, and 12:51.

<sup>31</sup> HVT at 9:11.

<sup>32</sup> HVT at 9:22 and 10:27.

<sup>33</sup> A copy of the letter notifying the Commission and the Harlan County Judge Executive of the board vacancy is attached as Exhibit 1.

<sup>34</sup> Black Mountain's Response to Staff's First Request for Information, Item 7.

<sup>35</sup> Black Mountain's Response to Staff's First Request for Information, Item 7.

December 5-6, 2023.<sup>36</sup> Mr. Shepherd, Mr. Clem, Mr. Williams and Mr. Miller did not complete the training within the required timeframe but have completed the training now. Each of the board members were unaware of the requirement and completed training as soon as possible after being made aware. Mr. Miller, Mr. Shepherd, Mr. Williams and Mr. Clem have shown they are contributing to Black Mountain in a positive way. Through their leadership, Black Mountain has begun the slow process of turning the utility around to ensure adequate, efficient, and reasonable service to the citizens of Harlan County. If any of the board was removed at this point, Black Mountain would go back to the dire situation of 2020.

If the Commission finds that due to the requirements in KRS 74.020 that any of the board members must be removed for failure to complete the required training within the timeframe contained in the statute, Black Mountain asks that certain board members be reappointed, and those reappointments be accepted by the Commission. Black Mountain is attaching as Exhibit 2, a letter from Harlan County Judge Executive, Dan Mosley, reappointing the Commissioners who are willing to be reappointed, should the Commission remove any of them from the Black Mountain board. Black Mountain believes that each of these board members have stepped up to serve Black Mountain during a time when it was in chaos. They came into a terrible situation and have been able to make great strides in correcting many of the issues that Black Mountain was facing. Their hard work and dedication to Black Mountain should not go unnoticed, and all of the good strides they have made should not be lost for the failure to attend the required training on time. Each of the board members who would be willing to continue to serve Black Mountain have now completed the required training and would attend any additional training required by the Commission should they be reappointed. Reappointing these members would also allow Black

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<sup>36</sup> Black Mountain's Response to Staff's First Request for Information, Item 7.

Mountain to retain a quorum in order to conduct the necessary business of the water district.

### **CONCLUSION**

Black Mountain, through its directors and general manager, did not willfully or intentionally violate KRS 278.300. The lines of credit were for less than two years. Each line of credit was a new line, not an extension of the original line of credit. The loan entered into in July 2020 was originally for thirteen months. It has been renewed, but not for longer than 6 years total. The current board members were all appointed after a mass resignation in 2020 and did not enter into any of the lines of credit or the loan, although they did vote to extend the loan. The current board is now making a concerted effort to change the utility for the better. The board members have all expressed an understanding of the importance of water training and are going to fulfill the yearly requirements. Black Mountain will also engage with accountants and legal counsel to determine the timing of its next rate adjustment to ensure further progress by the utility. Black Mountain respectfully requests the Commission find that Black Mountain committed no violations of any statute. Black Mountain further requests that if the Commission determines that any of the board members must be removed for failure to complete the required training within the statutory timeframe, that the board members contained in the letter from Judge Executive Dan Mosley be reappointed to their positions.

Respectfully submitted,

*Heather S. Temple*

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*Counsel for Black Mountain Utility District*

**CERTIFICATE OF SERVICE**

This is to certify that foregoing was submitted electronically to the Commission on May 24, 2024 and that there are no parties that have been excused from electronic filing. Pursuant to prior Commission orders, no paper copies of filing will be submitted.

*Heather S. Temple*

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*Counsel for Black Mountain Utility District*



EXHIBIT 1  
VACANCY NOTIFICATION LETTER

May 23, 2024

Ms. Linda C. Bridwell, P.E.  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, KY 40602

**Via email: PSCED@ky.gov**

Mr. Dan Mosley  
Harlan County Judge/Executive  
210 E. Central Street #111  
Harlan, KY 40831

**Via email: dan.mosley@harlanonline.net**

Re: Harlan County Water District Notice of Board Vacancy

Dear Executive Director Linda Bridwell and Judge Executive Mosley,

Black Mountain Utility District (“Black Mountain”) hereby gives notice that on May 14, 2024, its Board of Commissioners voted, at its regular board meeting, to accept the tendered resignation of Chad Brock, creating a vacancy on its Board of Commissioners. **Commissioner Chad Brock’s term expires January 1, 2027.** An excerpt of the Black Mountain board minutes accepting the resignation are attached to this letter.

Pursuant to KRS 74.020 (10)(a) Black Mountain is providing notice in writing of the vacancy to the Kentucky Public Service Commission and to the Harlan County Judge Executive Mosley within 30 days of the date of the vacancy. The vacancy is to be filled by qualified individuals appointed by the Harlan County Judge Executive. Please see a copy of KRS 74.020 attached.

This is to certify that the electronic filing has been transmitted to the Commission on May 23, 2024 and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means. Pursuant to the Commission’s July 22, 2021 Order in Case No. 2020-00085 no paper copies of this filing will be made. Please do not hesitate to contact me with any questions or concerns.

Sincerely,

  
L. Allyson Honaker

Enclosure

Excerpt from the May 14, 2024 Black Mountain Utility District Board Minutes

Next on the agenda is Chad Brock's resignation from the board. I'm going to read the letter that was received April 17th.

From. Chad Brock 174 Doss Hollow, Evarts, Kentucky 408 208. For the record, when did you receive this letter, Grant? Um.

I got it the 18th.

Okay. Uh, we actually received this letter from Chad Brock on April the 18th. It was.

I mean, that's all the reason that it wasn't brought up till now.

Okay. the letter states dated April 17th, 2024. It was written to Dan Mosley, Harlan County Judge executive, 210 East Central Street, suite 300, Harlan, Kentucky, 408 three one reference resignation from Black Mountain Utility District Board. Judge Mosley, please accept this letter as my formal resignation from the position as board member of Black Mountain Utility District. It has been an honor to serve Bmud and its customers in this capacity, and I am appreciative of the opportunity. Sincerely signed Chad Brock. This letter was forwarded to us. We spoke with our legal representation. Uh, Mr. Brock is still on the board until we accept his resignation. Do I hear or have a motion to accept, uh, Chad Brock's resignation? I'll make a motion to accept Chad Brock's. I've got a motion from Bill Clem to honor Chad Brock wishes and accept his resignation. Do I hear a second? I'll second. I got a second from Brandon Sheppard. All those in favor of accepting Chad Brock's resignation, per his wishes? All agree.

Very good. Uh. None opposed. Let the record show that Mr. Brock is no longer commissioner. Uh, his resignation has been accepted. Uh, Grant, will you please notify Allison Honecker and the Public Service Commission that, uh, Mr. Brock is no longer on the board. Yes, sir.

## EXHIBIT 2

Judge Executive Mosley Letter



P.O. BOX 956  
HARLAN, KENTUCKY 40831

DAN MOSLEY  
HARLAN COUNTY JUDGE EXECUTIVE

PHONE: (606) 573-2600  
FAX: (606) 573-3522  
TDD: 1-800-247-2510  
(FOR HEARING IMPAIRED)

May 23, 2024

Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, Ky. 40602

Dear Commissioners,

I write to you today in a state of anticipation. As I am now aware, pursuant to law, water district board members are subject to removal for not attending training within the first 12 months following appointment. I learned of this after the most recent case was filed concerning Black Mountain Utility District (BMUD).

BMUD Board Members inherited a terrible situation when they accepted my plea to become involved after the previous board and manager resigned. This current board is comprised of businessmen, a civil engineer, a state highway department employee, and a respected salesman in our community. They are competent people who have the best interest of the citizens they serve at heart. They have made tough decisions and led the water district through tumultuous times. One board member resigned in April because he was no longer willing to devote the time necessary, to a situation that often times looked thankless, and only resulted in criticism.

However, Bill Clem, Shawn Miller, Brandon Shepherd, and Dewayne Williams are willing to remain on the board. I appreciate their dedication to this work. It's hard to find folks with the skillsets they possess, the real-life experiences that translate to this work, and the willingness to WANT to serve in this capacity with no compensation. I humbly ask that if the commission chooses to remove these folks on a technicality for not being trained within the timeline required by law, a technicality that none of us were aware of, that a decision to reappoint them immediately is included in the order.

Removing the board right now and leaving vacancies would create disruption at a time when great progress is being made. It will leave vacancies for a second time, and cause difficulty in finding replacements in a timely fashion.

I want Black Mountain Utility District to be successful. That requires a competent board. These folks that have stayed the course and led this district the appropriate way forward deserve the opportunity to continue that course.

I respectfully ask that you consider my perspective in this matter and take it under consideration should you choose to remove the board members.

If I can be of assistance, don't hesitate to reach out.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dan Mosley", with a large, stylized flourish extending to the right.

Dan Mosley

Harlan County Judge/Executive

Cc: L. Allyson Honaker