

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

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

**VERIFIED APPLICATION FOR DECLARATORY ORDER, OR, IN THE
ALTERNATIVE, APPROVAL OF ASSET PURCHASE AGREEMENT**

Kentucky-American Water Company (“KAW”) and Black Mountain Utility District (“BMUD”) state the following:

1. KAW is a corporation organized and existing under the laws of the Commonwealth of Kentucky with its principal office and place of business at 2300 Richmond Road, Lexington, Kentucky 40502. KAW can be contacted by e-mail via the e-mail addresses of its counsel set forth below. KAW was incorporated on February 27, 1882, and is currently in good standing in the Commonwealth of Kentucky.

2. KAW 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; its Northern Division, consisting of Gallatin, Owen, Grant, and Franklin Counties; and the Southern Division, consisting of Bell, Clinton, Rockcastle and Jackson Counties. It 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. KAW is also engaged in the collection and treatment of wastewater in Franklin, Owen, Bourbon, and Clark Counties.

3. BMUD is a utility district organized and existing under the laws of the Commonwealth of Kentucky with its business address of 609 Four Mile Road, Baxter, Kentucky 40806. BMUD's telephone number is (606) 573-1277 and its fax number is (606) 573-1276. BMUD may be reached by e-mail at the e-mail address of its counsel below and at colby.bmud@gmail.com. BMUD was formed in 1986 pursuant to KRS Chapter 74 and is a water district and utility operating under the jurisdiction of the Public Service Commission ("Commission") for the provision of water utility services to approximately 3315 customers in Harlan County, Kentucky. BMUD currently provides sewer services to five residents in the community of Closplint in Harlan County, Kentucky. BMUD is governed by its Board of Commissioners.

4. In Case No. 2026-00097,¹ on July 10, 2026, the Commission approved KAW's acquisition of BMUD's water assets pursuant to an April 10, 2026, Asset Purchase Agreement submitted in that case. In that case, KAW and BMUD informed the Commission that the assets did not include sewer BMUD has for sewer service, and the Commission acknowledged that in its July 10, 2026, Order: "Black Mountain District's wastewater assets are not part of the proposed transaction. Black Mountain District plans to sell the Closplint cluster sewer system to Kentucky-American in a separate asset purchase agreement."

5. KAW and BMUD have reached a June 18, 2026, Asset Purchase Agreement ("APA") by which KAW will purchase from BMUD the sewer assets that make up the Closplint cluster sewer system. That agreement is attached as Exhibit 1. The Closplint cluster system is

¹ *Electronic Joint Application of Black Mountain Utility District and Kentucky-American Water Company for the Transfer of Control and Assets*, Case No. 2026-00097, Order at 4 (Ky. PSC July 10, 2026).

sewage collection and disposal system consisting of wastewater collection and conveyance lines, a 7,000-gallon septic tank, and an effluent disposal bed that are used permitted to serve six residential properties in the community of Closplint in Harlan County, Kentucky. They are the only sewer assets BMUD owns. Due to the recent increase in the size of the septic tank, BMUD anticipates the tank will only need to be pumped out every five to ten years. As such, average yearly operation and maintenance expenses for the assets are minimal to zero.

6. The assets were initially constructed to serve seven customers who would have been without sewer service given the decommissioning of a nearby wastewater treatment plant. There are now only five residents and BMUD charges a small monthly flat rate fee of \$15.74 to those five residents. The septic tank is permitted by the Harlan County Board of Health and was approved to serve up to six connections, meaning only six residences can be connected to the septic tank. As such, BMUD would not allow any new customers use of the septic system, and neither will KAW if it acquires those assets. It is a “closed” system, meaning it is closed to additional users and the public. KAW will continue maintaining and operating the system until there are no customers, which it believes may occur due to overall reductions in the population in this particular area/neighborhood where the septic tank is located. Because operational costs are anticipated to be minimal, KAW will not charge the residents a fee for doing so if it acquires the assets and the Commission declares that this is not jurisdictional sewer service.

7. Pursuant to 807 KAR 5:0001, Section 19, KAW requests a declaratory order from the Commission that its operation of the septic system for six residents is not utility service pursuant to KRS Chapter 278. KRS 278.010(3)(f) states, in relevant part:

“Utility” means any person . . . who owns, controls, operates, or manages any facility used for . . . the collection, transmission, or treatment of sewage *for the public, for compensation* . . . (emphasis added).

8. Under that definition, KAW's operation of the septic system will not be "for the public" and it will not be for compensation. Therefore, it is not utility service under KRS Chapter 278. In a case with similar facts involving Mountain Water District, the Commission determined that such sewer services do not amount to sewer service under KRS Chapter 278.² In that case, Mountain Water District operated 54 sewer septic systems and nine aerator sewage systems pursuant to contracts it had with individual property owners to install and operate the sewage disposal systems. It charged a monthly fee to do so. None of the sewage systems were connected to Mountain Water District's facilities. Each system was a closed system. In reliance on the definition at KRS 278.010(3), the Commission held that, although the facilities were used for sewage collection and treatment, they do not provide service "to the public." The Commission stated, "[u]tility service limited to a specific class of persons is not service to the public."³ While it is true that KAW will own the septic system and Mountain Water District did not, the critical fact and similarity is that KAW will not be providing sewer service to the public and cannot exceed the permitted six customer connections. Additionally, it will not be for compensation if the Commission determines this is non-jurisdictional service. In other cases, the Commission has confirmed that closed utility systems do not provide service "to the public."⁴

² *Petition of Mountain Water District for Disclaimer of Jurisdiction or Approval of Tariff*, Case No. 2009-00405, Order at 1-2 (Ky. PSC April 12, 2010); https://psc.ky.gov/PSCSCF/2009%20cases/2009-00405/20100412_PSC_ORDER.PDF

³ *Id.* at 5.

⁴ *Application of Metropolitan Sewer District for Approval to Acquire and Operate the Fairhaven Mobile Home Village Sewage Treatment Plant*, Case No. 90-169, Order at 3-5 (Ky. PSC June 22, 1990) ("One offers service to the 'public' ... when he holds himself out as willing to serve all who apply up to the capacity of his facilities.") (Citing: *North Carolina ex. rel. Utilities Comm'n v. Carolina Tel. & Tel. Co.*, 148 S.E.2d 100, 109 (N.C. 1966)); https://psc.ky.gov/order_vault/Orders_1990/199000169_06221990.pdf; *Electronic Application of Kentucky Manufactured Housing Institute for a Declaratory Order*, Case No. 2016-00305, Order at 4 (Ky. PSC March 10, 2017) ("Where the provision of utility service is limited to a specific class of persons, the Commission has found that such provision of service is not considered service to the public, and, therefore, not subject to the Commission's jurisdiction under KRS 278.040(2)."); https://psc.ky.gov/pscscf/2016%20Cases/2016-00305/20170310_PSC_ORDER.pdf.

9. In the alternative, if the Commission finds that the septic system is a utility service subject to Commission jurisdiction, pursuant to KRS 278.020(6), KAW and BMUD jointly petition the Commission for the approval of the attached APA by which KAW will acquire BMUD's sewer assets. KAW further petitions the Commission upon approval of the APA and closure of the transaction to permit KAW to serve the five BMUD sewer customers in accordance with KAW's existing sewer tariff except that KAW be permitted to charge those customers the same monthly fee BMUD charges them of \$15.74 monthly flat-rate. KAW would adopt those charges and add them to KAW's existing sewer tariff.

10. KAW and BMUD seek to consummate the purchase by KAW of BMUD's sewer assets no later than September 2026. The proposed purchase includes all of BMUD's tangible assets and real property interests devoted to the provision of sewer service except for the limited exclusions set forth in the APA. KAW and BMUD request an Order from the Commission approving their transaction no later 45 days from the date of filing of this Joint Application which would be September 14, 2026.

11. From and after the contemplated September 2026 closing, KAW will assume responsibility for the operation of BMUD's septic sewer operations and service to BMUD's five sewer customers.

12. KAW has the financial, technical, and managerial abilities to skillfully and efficiently operate the acquired sewer assets as required by KRS 278.020(6). Evidence of KAW's financial integrity to ensure the continuity of sewer service to BMUD's six sewer customers as required by KRS 278.020(6) may be found in the KAW annual reports on file with this Commission which were filed in March 2026. To the extent the Commission requires specific

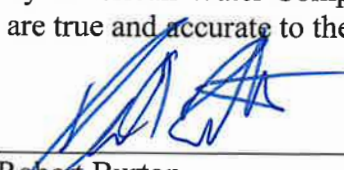
evidence of KAW's financial integrity not found in those annual reports, KAW will provide such information upon Commission request in this matter.

13. This Joint Application is made in accordance with the law and for a proper purpose in accordance with KRS 278.020(6) and is consistent with the public interest pursuant to KRS 278.218.

14. WHEREFORE, KAW and BMUD ask that the Commission enter an order: (1) declaring that KAW's purchase and operation of the subject sewer assets is not sewer service subject to Commission jurisdiction; or, (2) in the alternative, if the Commission determines that it is sewer service subject to Commission jurisdiction, authorizing the transfer of ownership of BMUD's sewer assets under the terms set forth in the APA, and authorizing KAW to provide sewer services to BMUD's five sewer customers in accordance with KAW's existing sewer tariff on file with the Commission with the adoption of the \$15.74 monthly flat-rate fee charges to those sewer customers.

VERIFICATION

I, Robert Burton, President of Kentucky-American Water Company, do hereby state that the statements made in this Joint Application are true and accurate to the best of my knowledge.



Robert Burton

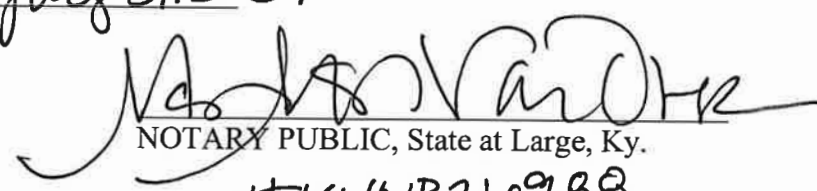
COMMONWEALTH OF KENTUCKY)

COUNTY OF FAYETTE)

Subscribed, sworn to, and acknowledged before me by Robert Burton, President of Kentucky-American Water Company, for and on behalf of said corporation, on this 29th day of July, 2026.

My Commission expires:

July 31, 2029



NOTARY PUBLIC, State at Large, Ky.

#KYNP26988.

MOLLY MCCLEESE VAN OVER
NOTARY PUBLIC
COMMONWEALTH OF KENTUCKY
COMM. # KYNP26988
MY COMMISSION EXPIRES JULY 31, 2029

VERIFICATION

I, Kyle Howard, Chairman of Black Mountain Utility District, hereby state that the statements made in this Joint Application are true and accurate to the best of my knowledge.

Kyle Howard
Kyle Howard

COMMONWEALTH OF KENTUCKY)

COUNTY OF Harlan)

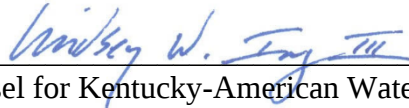
Subscribed, sworn to, and acknowledged before me by Kyle Howard, Chairman of Black Mountain Utility District, for and on behalf of said entity.

My Commission expires: 2-23-30

Danny M. Caudill
NOTARY PUBLIC, State at Large, Ky.



Lindsey W. Ingram III
L.Ingram@skofirm.com
Monica H. Braun
Monica.braun@skofirm.com
STOLL KEENON OGDEN PLLC
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507-1801
Telephone: (859) 231-3000
Fax: (859) 259-3503

BY: 
Counsel for Kentucky-American Water Company

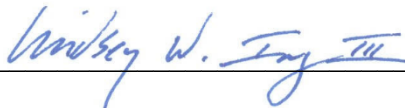
L. Allyson Honaker
Heather S. Temple
Meredith L. Cave
allyson@hloky.com
heather@hloky.com
meredith@hloky.com
HONAKER LAW OFFICE, PLLC
1795 Alysheba Way Suite 1203
Lexington, Kentucky 40509
Telephone: (859) 368-8803

BY: ___/s/ Allyson Honaker
Counsel for Black Mountain Utility District

CERTIFICATE

This certifies that the electronic filing of this document is a true and accurate copy of the document in paper medium; that the electronic filing has been transmitted to the Commission on July 31, 2026; and that no party has been excused from participation by electronic means.

STOLL KEENON OGDEN PLLC

By 

Counsel for Kentucky-American Water Company