

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ELECTRONIC INVESTIGATION OF A	)	
POSSIBLE VACANCY ON THE BOARD OF	)	CASE NO.
COMMISSIONERS OF BLACK MOUNTAIN	)	2021-00263
UTILITY DISTRICT	)	

ORDER

The Commission initiated this proceeding to determine who should be appointed to fill the vacancy of the expired term on the board of commissioners for Black Mountain Utility District (Black Mountain District). The Commission made a finding that a vacancy existed in Case No. 2020-00042.<sup>1</sup> Pursuant to KRS 74.020(4), the Commission, by this Order, appoints DeWayne L. Willis to fill the vacant seat.

BACKGROUND

Black Mountain District is a water utility district organized pursuant to KRS Chapter 74 that owns and operates a water distribution system, through which it provides retail water service to approximately 3,372 customers residing in Harlan County, Kentucky.<sup>2</sup> Black Mountain District also owns and operates a sewer collection system through which it provides sewer service to approximately seven customers residing in Harlan County,

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<sup>1</sup> Case No. 2020-00042, *Black Mountain Utility District and Its Individual Commissioners, Raymond Cox, Charles Hyde, Robert Simpson, Steve Sargent, Ralph Turner, and General Manager, Raymond Metcalf Alleged Failure to Comply with KRS 278.140, 278.230, 807 KAR 5:006 SECTIONS: 4; 25(2); 26 (6) AND 807 KAR 5:066 SECTIONS: 6(2); 7, AND 17* (Ky. PSC Sept. 9, 2020).

<sup>2</sup> *Annual Report of Black Mountain Utility District for Water to the Public Service Commission for the Calendar Year Ended December 31, 2019* at 12 and 49.

Kentucky.<sup>3</sup> Black Mountain District was organized in 1986 by the Harlan Fiscal Court pursuant to KRS Chapter 74.<sup>4</sup> On July 13, 2012, the Commission approved the proposed merger of Green Hills Water District and Black Mountain District.<sup>5</sup>

### PROCEDURAL HISTORY AND LEGAL STANDARD

Black Mountain District is governed by a five-person board of commissioners and has a statutory responsibility to “control and manage” the water district’s affairs.<sup>6</sup> The Commission found that a vacancy existed in Case No. 2020-00042.<sup>7</sup> Further, the Commission found that the term of Mr. Sergent expired and was not filled within 90 days. As such the statutory duty and the exclusive authority to fill the vacancy shifted from Harlan County Judge/Executive and Harlan Fiscal Court to the Commission. KRS 74.020(4), which addresses the appointment of members to the boards of commissioners of water districts, states:

Vacancies shall be filled by the same appointing authority which is empowered to make the original appointment. Vacancies resulting from cause other than expiration of the term shall be filled for the unexpired term only. Notwithstanding KRS 67.710, a vacancy resulting from the expiration of a term or the death, resignation, or removal of the incumbent shall be filled by the Public Service Commission if, within ninety (90) days following the vacancy, the vacancy has not been filled by the appropriate county judge/executive with approval of the fiscal court.

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<sup>3</sup> *Annual Report of Black Mountain Utility District for Sewer to the Public Service Commission for the Calendar Year Ended December 31, 2019* at 25.

<sup>4</sup> Harlan County, Kentucky, Ordinance Relating to the Ratification, Confirmation, and Approval of the Creation of, and the Present Formation of Black Mountain Utility District (May 8, 1986).

<sup>5</sup> Case No. 2012-00095, *Application of Black Mountain Utility District and Green Hills Water District for Merger Pursuant to KRS 74.363* (Ky. PSC July 13, 2012) at 9.

<sup>6</sup> KRS 74.020(1).

<sup>7</sup> Case No. 2020-00042, *Black Mountain Utility District and its individual commissioners, Raymond Cox, Charles Hyde, Robert Simpson, Steve Sergent, Ralph Turner, and General Manager, Raymond Metcalf* (Ky. PSC Mar 9, 2020) at 8.

The Commission's August 12, 2021 Order established this case to determine who should be appointed to fill the vacancy of the expired term on the board of commissioners for Black Mountain District. To ensure a wide range of candidates was considered, the Commission ordered Black Mountain District to publish, in the newspaper with the largest circulation in the county, the notice of a vacancy on Black Mountain District's Board of Commissioners and to supply proof of publication to the Commission.<sup>8</sup> In response, Black Mountain District ran the notice from September 15, 2021, to September 29, 2021 in the *Harlan Enterprise*.<sup>9</sup> On October 7, 2021, a request for consideration was filed requesting that the Commission consider DeWayne L. Williams to fill the vacancy. The Commission conducted a virtual interview with the candidate.

In making an appointment, the Commission must consider the totality of the circumstances, including the education, business and management experience, and personal history of the proposed candidates, and the existing financial and operating condition of the water district.<sup>10</sup>

### FINDINGS

Based upon our review of the evidence of record, and Mr. Williams' experience, the Commission finds that Mr. Williams is the best-suited candidate and that there is no information to suggest that he is unqualified to serve in the designated position. The Commission further finds that Mr. Williams meets the qualifications of a member of a board of commissioners: he resides in Black Mountain District's territory, is of legal age,

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<sup>8</sup> Order (Ky. PSC Aug. 12, 2021) at 4.

<sup>9</sup> Documents into the Record (filed Sept. 28, 2021).

<sup>10</sup> See, e.g., Case No. 2012-00052, *Request to Fill Vacancies on Western Pulaski County Water District Board of Commissioners* (Ky. PSC Jan. 16, 2013).

possess adequate education, business skills, and experience to perform the duties of water district commissioner, and does not have any legal disability that would disqualify him from serving in the position. Accordingly, the Commission finds that Mr. Williams should be appointed to fill the existing vacant seat on Black Mountain District's Board of Commissioners.

IT IS THEREFORE ORDERED that:

1. DeWayne L. Williams is appointed to fill the vacant seat identified in the March 9, 2020 Order. The term shall expire on February 16, 2023.
2. The Executive Director shall serve a copy of this Order upon the Harlan County Judge/Executive, the members of the Harlan Fiscal Court, the Harlan County Attorney, and the Black Mountain District Board of Commissioners.
3. This case is closed and removed from the Commission's docket.

By the Commission

ENTERED  
JAN 05 2022 rcs  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director

Case No. 2021-00263

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