

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

The Commission, on its own motion, establishes this proceeding to investigate Black Mountain Utility District (Black Mountain District); its commissioners, Bill Clem, Brandon Shepherd, Chad Brock, Dwayne Williams, and Shawn Miller and its manager, Grant Cooper,¹ to examine the financial and operational condition of Black Mountain District.

LEGAL STANDARD

KRS 278.300 requires Commission approval before a utility may “issue any securities or evidences of indebtedness, or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person.”² The legal standard contained in KRS 278.300(3) establishes the purview of Commission review, stating:

The commission shall not approve any issue or assumption unless, after investigation of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability, the commission finds that the issue or assumption is for some lawful object within the corporate purposes of the utility, is necessary or appropriate for or consistent with the proper performance by the utility of

¹ The Board of Commissioners is not updated in the PSC database and the names were obtained from the Case No. 2022-00275 *Electronic Application of Black Mountain Utility District for a Rate Adjustment Pursuant to 807 KAR 5:076* (Ky PSC Aug. 22, 2022).

² KRS 278.300(1)

its service to the public and will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purpose.

Additionally, KRS 278.300(8) establishes that KRS 278.300 does not apply if the proposed issuance of securities or indebtedness is payable at periods of not more than two years from the issuance date and any renewals of such notes do not exceed six years from the initial issuance date.

Under KRS 278.250 and KRS 278.260, the Commission is authorized to investigate and examine the condition of any utility subject to its jurisdiction, including any practice or act relating to the utility service. Under KRS 278.280, if the Commission finds that any practice or act is unjust, unreasonable, unsafe, improper, inadequate, or insufficient, then the Commission has the authority to determine the just, reasonable, safe, proper, adequate, or sufficient practice or method to be observed. Upon a finding that Black Mountain District, its commissioners or manager violated any provision of KRS Chapter 278, Commission regulations, or a Commission Order, KRS 278.990 authorizes the Commission to assess civil penalties not to exceed \$2,500 for each offense against a utility and against any officer, agent, or employee of a utility who willfully violates any provisions of KRS Chapter 278, Commission regulations, or Orders.

BACKGROUND

Black Mountain District is a water district organized in 1983 pursuant to KRS Chapter 74. Black Mountain District serves 3,363 customers³ in Harlan County,

³ Case No. 2022-00275 *Electronic Application of Black Mountain Utility District for a Rate Adjustment Pursuant to 807 KAR 5:076* (Ky. PSC Aug. 22, 2022), ARF Form 1.

Kentucky.⁴ In 2020, the Commission opened an investigation into the commissioners and manager for an 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 17.⁵ In that case, Black Mountain District was alleged to have failed to respond to inspection reports, alleging several deficiencies.⁶ The opening Order in the case detailed numerous issues with annual reports and audits leading up to the investigation.⁷ Although the Commission ordered a hearing to be held,⁸ the case was resolved with Notice that the entirety of the Board of Commissioners resigned.⁹

Black Mountain District filed an application for an alternative rate adjustment pursuant to 807 KAR 5:076 on Aug. 22, 2022.¹⁰ During the processing of the application, numerous issues and deficiencies were noted by Commission Staff in its report.¹¹

On Oct. 24, 2022, Black Mountain District filed a copy of the original note dated in the amount of \$150,000.00 borrowed from June 16, 2015.¹² The initial note had a one-

⁴ Case No. 2022-00275 *Electronic Application of Black Mountain Utility District for a Rate Adjustment Pursuant to 807 KAR 5:076* (Ky. PSC Aug. 22, 2022).

⁵ Case No. 2020-00042 *Black Mountain Utility District and Its Individual Commissioners, Raymond Cox, Charles Hyde, Robert Simpson, Steve Sergeant, 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).

⁶ Case No. 2020-00042, March 9, 2020 Order at 2–3.

⁷ Case No. 2020-00042, March 9, 2020 Order at 4–7.

⁸ Case No. 2020-00042, March 9, 2020 Order.

⁹ Case No. 2020-00042, March 9, 2020 Order.

¹⁰ Case No. 2022-00275, Commission Staff's Report (filed Mar. 15, 2023).

¹¹ Case No. 2022-00275, Commission Staff's Report at 23–28.

¹² Case No. 2022-00275, Black Mountain District's Updated Supplemental Response to Commission Staff's First Request for Information (Staff's First Request), (filed Oct. 24, 2022), Item 7(a).

year term. However, the note has been refinanced in the amount \$101,196.54 and currently was due and owing on October 1, 2023.¹³ As of October 31, 2022, the balance was approximately \$101,000.¹⁴ As of December 31, 2022, the note has been outstanding for approximately 7.5 years.¹⁵ Black Mountain District was unable to provide any evidence that the utility requested Commission approval for the indebtedness.¹⁶

The Commission finds that the note and its refinancing in excess of six years provides *prima facie* evidence of a violation of KRS 278.300.

The Commission Staff Report in Case No. 2022-00275 noted that the water loss for the test year was 47.9095 percent.¹⁷ The 2020 total annual cost of water loss to Black Mountain District is \$464,858, while the annual cost of water loss in excess of 15 percent is \$319,316.¹⁸ Black Mountain District has reported consistently high water loss.¹⁹ Although the utility has not had its water system inspected recently, in a 2020 inspection the district was deficient for failing to have a water shortage plan and high water loss.²⁰ Black Mountain District never responded to that report and has not subsequently filed a water shortage plan. When the wastewater system was inspected on December 1, 2022,

¹³ Case No. 2022-00275, Black Mountain District's Updated Supplemental Response to Staff's First Request, Item 7(b).

¹⁴ Case No. 2022-00275, Commission Staff Report at 22.

¹⁵ Case No. 2022-00275, Commission Staff Report at 22.

¹⁶ Case No. 2022-00275, Commission Staff Report at 22.

¹⁷ Case No. 2022-00275, Commission Staff Report at 4.

¹⁸ Case No. 2022-00275, Commission Staff Report at 4.

¹⁹ *Annual Report of Black Mountain District to the Public Service Commission for the Year Ending (Annual Report) December 31, 2022* at 57-58 (41.9975%); 2019 Annual Report at 57-58 (39.6619%), 2018 Annual Report at 57 (43.8686%), 2017 Annual Report at 56 (33.3658%).

²⁰ 2020 PSC Inspection Report dated Oct. 28, 2020.

the inspector noted that (1) the utility is not furnishing the rate schedule to the customers pursuant to 807 KAR 5:006, Section 7(1)(b) and (2) the utility is not conducting daily inspections of all mechanical equipment pursuant to 807 KAR 5:071, Section 7(4). Black Mountain District did not file a response to the inspection report.

Black Mountain District has had three informal complaints made by customers this year. The Commission incorporates them into the record as an Appendix. As of August 30, 2023, 835 customers were out of water because Evarts was unable to provide water. This situation is a perfect example of why water loss and water outage emergency plans are essential for a water utility.

In general, since the commissioners resigned in 2020, the information for the commissioners for Black Mountain District has not accurately been updated in accordance with KRS 74.020(10)(a)-(b). The Commission does not have any records of any commissioners attending any PSC training since prior to 2020.

Black Mountain District failed to keep records necessary for Staff to do a full review of the financial status.²¹ The utility has not filed a completed full audit since 2017.²² Commission Staff used the 2020 Annual Report for the test year in Case No. 2022-00275 because 2021 had not been accepted by the Commission as complete when the application was filed on August 22, 2022. Under 807 KAR 5:006, Section 4(2), annual reports must be filed on or before March 31 of each year.²³

²¹ Case No. 2022-00275, Commission Staff Report at 24.

²² Case No. 2022-00275, Commission Staff Report at 24. The 2017 Audit was not accepted as filed until January 2019 according to the PSC website.

²³ Case No. 2022-00275, Commission Staff Report at 25-26. The 2019 Annual Report is the most recent report accepted as filed and published on the PSC website.

Not only is Black Mountain District failing to prepare proper reports and records, the utility appears to be using federal funds to pay bills.²⁴ In addition to that, on January 11, 2022, the commissioners voted to unanimously pay garbage bills out of debt surcharge money.²⁵ The Commission finds that this action is *prima facie* evidence that the Board of Commissioners violated a Commission Order.²⁶

Pursuant to KRS 74.020(1), a water district shall be administered by a board of commissioners which shall control and manage the affairs of the district. Black Mountain District's commissioners and manager are subject to KRS 278.990, as an employee of the utility, and if it is found that they willfully aided and abetted in violations of Commission Orders, statutes, or regulations, they may be subject to penalties pursuant to KRS 278.990 or removal pursuant to KRS 74.025 for incompetency, neglect of duty, gross immorality, or nonfeasance, misfeasance, or malfeasance.

IT IS THEREFORE ORDERED that:

1. Black Mountain District shall submit to the Commission a written response to provide an update on the utility's financial status, operations, and progress to combat water loss within 20 days of the date of service of this Order.
2. Counsel shall enter an appearance or appearances within 20 days of the date of service of this Order.

²⁴ Case No. 2022-00275, Commission Staff Report at 28.

²⁵ Black Mountain District's Supplemental Responses to Staff's First Request (filed Oct. 21, 2022), Item 1f Black Mountain District's Board of Commissioners minutes from January 2022.

²⁶ Case No. 2015-00088, *Alternative Rate Adjustment Filing of Black Mountain Utility District* (Ky. PSC Nov. 9, 2015), Order at 9, ordering paragraph 3.

3. The Commission directs Black Mountain District to the Commission's July 22, 2021 Order in Case No. 2020-00085²⁷ regarding filings with the Commission. Electronic documents shall be in portable document format (PDF), shall be searchable, and shall be appropriately bookmarked.

4. Each response shall include the name of the witness responsible for responding to the questions related to the information provided. Each response shall be answered under oath or, for representatives of a public or private corporation or a partnership or association or a governmental agency, be accompanied by a signed certification of the preparer or the person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

5. A party filing a paper containing personal information shall, in accordance with 807 KAR 5:001, Section 4(10), encrypt or redact the paper so that personal information cannot be read.

6. The records of Commission Case No. 2022-00275 are made a part of the record by reference only.

7. Judge Executive, Dan Mosley, shall be served with a copy of this Order.

²⁷ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001, Section 8).

PUBLIC SERVICE COMMISSION



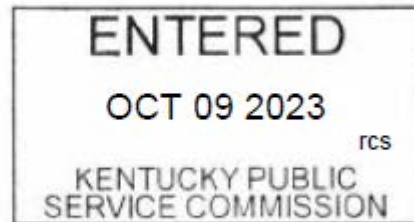
Chairman



Vice Chairman



Commissioner



ATTEST:



Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2023-00235 DATED OCT 09 2023

THREE PAGES TO FOLLOW

*Dan Mosley
Harlan County Judge Executive
PO Box 956
Harlan, KENTUCKY 40831

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

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

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

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

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

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

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