

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

On October 9, 2023, the Commission established this case to investigate the financial and operating capacity of Black Mountain Utility District (Black Mountain District). The Commission mentioned in the opening Order that it does not have any records of any commissioners attending any training since 2020.<sup>1</sup> On March 26, 2024, a hearing was held in this matter. On May 24, 2024, Black Mountain District filed its post-hearing brief. For the reasons below, the Commission finds that all seats on the Black Mountain District’s Board of Commissioners (Board) are vacant.

LEGAL STANDARD

Water districts formed pursuant to KRS Chapter 74, like Black Mountain District, “shall be administered by a board of commissioners which shall control and manage the affairs of the district.” The term of each water district commissioner shall be four years, “except as provided in this section.” Pursuant to KRS 74.020(1)(a), “[i]nitial appointments shall be for terms of two (2), three (3), and four (4) years, as designated by the [appropriate fiscal] court. Further, KRS 74.020(4) states that vacancies “resulting from cause other than expiration of the term [of the water commissioner] shall be filled for the

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<sup>1</sup> Order (Ky. PSC Oct. 9, 2023) at 5.

unexpired term only.” Generally, the county judge executive has authority to appoint the members of the board of commissioners of a water district subject to the approval of the fiscal court. However, if the county judge executive, with approval of the fiscal court, fails to fill “a vacancy resulting from the expiration of a term or the death, resignation, or removal of the incumbent . . . within ninety (90) days following the vacancy,” then the vacancy “shall be filled by the Public Service Commission.”

KRS 74.020(8)(b) states that within 12 months of initial appointment, each commissioner shall complete water commissioner training. Furthermore, KRS 74.020(8)(b) states that “any commissioner who fails to complete the program within twelve (12) months of his or her initial appointment shall forfeit his or her office and all right to act in discharge of the duties of the office.”

### BACKGROUND

Black Mountain District is a water district organized in 1983 pursuant to KRS Chapter 74. Black Mountain District serves 3,363 customers<sup>2</sup> in Harlan County, Kentucky. Three of the current Board members, Shawn Miller, Bill Clem, and Chad Brock were appointed by the Harlan County Fiscal Court (Harlan Fiscal Court) on August 5, 2020, following the resignation of the entire Black Mountain District Board.<sup>3</sup> Brandon

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<sup>2</sup> Case No. 2022-00275 *Electronic Application of Black Mountain Utility District for a Rate Adjustment Pursuant to 807 KAR 5:076* (filed Aug. 22, 2022), ARF Form 1.

<sup>3</sup> Black Mountain District’s Response to Commission Staff’s Second Request for Information (Staff’s Second Request) (filed Feb. 2, 2024), Item 1, Harlan Fiscal Court Minutes from August 4, 2020.

Shepard was appointed March 16, 2021, to fill the term of Jeff North by the Harlan Fiscal Court.<sup>4</sup> Dewayne Williams was appointed by the Commission on January 5, 2022.<sup>5</sup>

Mr. Williams and Mr. Shepard attended water commissioner training on October 9 and October 10, 2023.<sup>6</sup> Mr. Clem and Mr. Miller attended water commissioner training on December 5 and December 6, 2023.<sup>7</sup> Mr. Brock has never attended a certified Commission training.<sup>8</sup> At the hearing held on March 26, 2024, each commissioner who testified confirmed that he did not attend water commissioner training within 12 months of appointment.<sup>9</sup>

In Black Mountain District's post hearing brief, Black Mountain District stated that since the hearing, Chad Brock has tendered his resignation to the Black Mountain District Board.<sup>10</sup> Black Mountain District stated that the 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 was sent on May 23, 2024.<sup>11</sup> Black Mountain District stated each of the board members were unaware of the training

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<sup>4</sup> Black Mountain District's Response to Staff's Second Request, Item 1, Harlan Fiscal Court Minutes from March 16, 2021.

<sup>5</sup> Case No. 2021-00263, *An Electronic Investigation of a Possible Vacancy on the Board of Commissioners of Black Mountain Utility District* (Ky. PSC Jan. 5, 2022), Order.

<sup>6</sup> Notice of Attended Training (filed Nov. 11, 2023), Appendix B at 2.

<sup>7</sup> Black Mountain District's Response to Commission Staff's First Request for Information (Staff's First Request) (filed Dec. 27, 2023), Item 7.

<sup>8</sup> Hearing Video Transcript (HVT) of the March 26, 2024 Hearing at 12:54:48-12:55:10.

<sup>9</sup> HVT of the March 26, 2024 Hearing at 12:30:30-12:30:51 (Shawn Miller); 12:43:50-12:44:01 (Dewayne Williams); 12:54:48-12:55:10 (Chad Brock) 13:00:30-12:00:51 (Brandon Shepard). Mr. Clem was not present at the hearing and was not excused by the Commission. See Order (Ky. PSC Mar. 28, 2024) at 1.

<sup>10</sup> Black Mountain District's Post Hearing Brief (filed May 24, 2024) at 5.

<sup>11</sup> Black Mountain District's Post-Hearing Brief at 5.

requirement and completed training as soon as possible after being made aware.<sup>12</sup> Black Mountain District stated that Mr. Miller, Mr. Shepard, Mr. Williams, and Mr. Clem have shown they are contributing to Black Mountain District in a positive way.<sup>13</sup> Black Mountain District stated that if any of the Board was removed at this point, Black Mountain District would go back to the dire situation of 2020. Black Mountain District asked the Commission that if any of the board members must be removed for failure to complete the required training within the timeframe contained in the statute, for the Commission to reappoint certain members.<sup>14</sup>

Black Mountain District's post hearing brief included a recommendation letter from Dan Mosley, the Harlan County Judge Executive, for Bill Clem, Shawn Miller, Brandon Shepard, and DeWayne Williams.<sup>15</sup> In his letter, Dan Mosley stated that the current board is comprised of businessmen, a civil engineer, a state highway department employee, and a respected salesman in our community.<sup>16</sup> He stated that they are competent people who have the best interest of the citizens they serve at heart, and they have made tough decisions and led the water district through tumultuous times.<sup>17</sup> He stated that it is 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.<sup>18</sup> He

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<sup>12</sup> Black Mountain District's Post Hearing Brief at 6.

<sup>13</sup> Black Mountain District's Post Hearing Brief at 6.

<sup>14</sup> Black Mountain District's Post Hearing Brief at 6.

<sup>15</sup> Black Mountain District's Post Hearing Brief, Exhibit 2 at 1.

<sup>16</sup> Black Mountain District's Post Hearing Brief, Exhibit 2 at 1.

<sup>17</sup> Black Mountain District's Post Hearing Brief, Exhibit 2 at 1.

<sup>18</sup> Black Mountain District's Post Hearing Brief, Exhibit 2 at 1.

asked that a decision to reappoint the commissioners be immediately included in the Order.<sup>19</sup>

All five commissioners failed to meet the training requirement set for in KRS 74.020(8)(b). The Commission finds that the seats of Shawn Miller, Bill Clem, and Chad Brock are vacated as of August 6, 2021.<sup>20</sup> Brandon Shepard's seat is vacated as of March 17, 2022. Dewayne William's seat is vacated as of January 6, 2023. Therefore, the Commission finds that, for all seats on the Black Mountain District's Board, a vacancy has existed for more than 90 days, and that the Commission has the authority to fill the positions for a four-year term.

Having reviewed the record and being otherwise sufficiently advised, the Commission, by this Order, reappoints Shawn Miller, Brandon Shepard, and Dwayne Williams to fill their respective vacant seats<sup>21</sup>. In making a selection, 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. Based upon a review of the evidence of record as well as Mr. Miller, Mr. Shepard, and Mr. Williams' experience, the Commission finds that all three are qualified and the best suited candidates to serve in the designated positions. To reach this conclusion the Commission finds that Mr. Miller, Mr. Shepard, and Mr. Williams reside in Black Mountain District's territory, specifically

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<sup>19</sup> Black Mountain District's Post Hearing Brief, Exhibit 2 at 1.

<sup>20</sup> Black Mountain District's Response to Staff's First Request, Item 5, Attachment at 5.

<sup>21</sup> Bill Clem did not timely tell counsel of his inability to attend the hearing, and a motion was filed on March 22, 2024, asking for him to be excused. This motion was denied at the hearing held on March 26, 2024, and Mr. Clem did not attend the hearing.

Harlan County; are of legal age; possesses adequate education, business skills, and experience to perform the duties of water district commissioner; and do not have any legal disability that would disqualify them from serving in the position. Furthermore, these reappointments are necessary to facilitate a smooth transition and ensure that Black Mountain District can still conduct business and provide adequate, efficient, and reasonable service to its customers. Accordingly, the Commission finds that Mr. Miller, Mr. Shepard, and Mr. Williams should be appointed to fill the vacancy on the Board as identified above. The Commission notes that all reappointed Commissioners should ensure that they read and comply with KRS 74.020, including all training requirements.

To ensure that a wide range of candidates are considered for the remaining positions, the Commission will require Black Mountain District to publish the notice of vacancy attached as an Appendix to this Order in a newspaper of general circulation in Harlan County. The Commission will consider any applications submitted within 20 days after the publication of notice, and each such application should be made in writing and should include the applicant's name, address, telephone number, and qualifications and shall reference this case number. The Commission will also consider recommendations and letters from references submitted in writing and received within a reasonable time, though such letters should reference this case number to ensure they are placed in the proper file. After receiving the applications, the Commission will determine whether each candidate meets the constitutional and statutory requirements for the office of water district commissioner and, of those candidates that meet these requirements, which is best suited to sit on Black Mountain District's Board.

IT IS THEREFORE ORDERED that:

1. The case style of this case shall be amended to reflect the expanded investigation and shall read as follows:

ELECTRONIC INVESTIGATION INTO THE FINANCIAL AND OPERATING CAPACITY OF BLACK MOUNTAIN UTILITY DISTRICT AS WELL AS POSSIBLE VACANCIES ON THE BOARD OF COMMISSIONERS OF BLACK MOUNTAIN UTILITY DISTRICT

2. Shawn Miller, Brandon Shepard, and Dwayne Williams are hereby appointed to fill their respective vacant seats on Black Mountain District's Board.

3. The term to which Shawn Miller, Brandon Shepard, and Dwayne Williams are appointed shall expire on June 14, 2028.

4. Within 20 days of the date of entry of this Order, Black Mountain District shall publish, in a newspaper of general circulation in Harlan County, the notice of the vacancies on Black Mountain District's Board attached as Appendix hereto.

5. Within five days of publication, Black Mountain District shall supply proof of publication to the Commission.

6. Within 20 days of the date of publication, any person who wishes to apply as a candidate to fill the vacancies on Black Mountain District's Board shall submit to the Commission, in writing, their name, address, telephone number, qualifications, and shall reference Case No. 2023-00235.

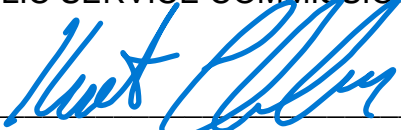
7. The term of the commission appointed shall be four years pursuant to KRS 74.020.

8. The Executive Director shall service a copy of this Order upon the Harlan County Judge/Executive; the members of the Harlan County Fiscal Court; and Black Mountain District's Board.

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PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ENTERED  
JUN 14 2024  
rcs  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director *For*

## APPENDIX

### APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2023-00235 DATED JUN 14 2024

Let it be known to the residents served by Black Mountain Utility District that there are two vacancies on the Black Mountain Utility District's Board of Commissioners. Five vacancies to be filled within the Black Mountain Utility District service area. The requirements to serve as a commissioner can be found at KRS 74.020. Any person interested in applying for the position shall submit notification, in writing, referencing Case No. 2023-00235 with contact information and any qualifications to the Public Service Commission located at 211 Sower Boulevard, Frankfort, Kentucky 40601, within 20 days of the date of this publication.

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\*Dan Mosley  
Harlan County Judge Executive  
PO Box 956  
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\*Chad Brock  
Chairman  
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