

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF NORTHERN KENTUCKY	)	
WATER DISTRICT FOR AN ADJUSTMENT OF	)	CASE NO.
RATES, ISSUANCE OF BONDS, AND TARIFF	)	2010-00094
CHANGES	)	

ORDER

Northern Kentucky Water District ("NKWD") has applied for authority to issue \$32,500,000 of Water District Revenue Bonds, Taxable Build America Bond Series 2010, to adjust its rates for water service, and to revise certain provisions of its tariff. Because of the expiration on December 31, 2010 of certain provisions in existing federal law that favorably affect the proposed bond issuance, the Commission addresses in this Order that portion of NKWD's application concerning the proposed bond issuance and defers action on the remaining portions of the application.<sup>1</sup>

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<sup>1</sup> NKWD seeks to take advantage of refundable tax credits for "Build America Bonds" that the American Recovery and Reinvestment Act of 2009 ("ARRA"), Pub. L. No. 111-5, 123 Stat. 115 (2009), provides. These issuances must occur before December 31, 2010. 26 U.S.C. § 6431(a). See also I.R.S. Notice 2009-26. The U.S. Congress is considering an extension of some ARRA provisions; however, recent speculation suggests that Congress will not continue the "Build America Bonds" past this date. See Jeannette Neumann, *Munis Hit As Market Braces for BABs' End*, Wall Street Journal, Dec. 14, 2010, available at <http://online.wsj.com/article/SB10001424052748704681804576018022360684088.html>. Even if an extension occurs, NKWD's financial advisor cautions, the amount of the federal subsidy may be scaled back and increase NKWD's cost for debt. Prefiled Testimony of Keith Brock at 4. At the hearing in this matter, NKWD indicated the need to issue the proposed bonds in December 2010. VR: 10/27/10; 11:54:23 -11:54:54.

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. NKWD requests authority to issue \$32,500,000 of Water District Revenue Bonds, Taxable Build America Bond Series 2010.<sup>2</sup>

2. The proposed bonds will mature over a 27-year period and have interest rates ranging from 1.4 percent to 5.75 percent per annum.<sup>3</sup>

3. NKWD has designated all bonds issued through the proposed bond issuance as “Build America Bonds” and has irrevocably elected the direct payment to issuer option under Section 6431 of the Internal Revenue Code.<sup>4</sup>

4. Section 6431(a) of the Internal Revenue Code authorizes a refundable tax credit of 35 percent of the total coupon interest payable to investors in “Build America Bonds” to be directly paid by the federal government to state or local governmental issuers of “Build America Bonds” upon the issuer’s request for payment.

5. NKWD estimates that federal government payments to NKWD as a result of the proposed bond issuance will be \$7,916,164.<sup>5</sup>

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<sup>2</sup> In its Application, NKWD applied for authority to issue approximately \$32,500,000 of revenue bonds. Application at ¶ 7. In his written testimony, NKWD’s financial advisor testified that NKWD must issue approximately \$32,465,000 of revenue bonds “to cover the cost of financing its current revenue needs.” Prefiled Testimony of Keith Brock at 3. NKWD subsequently revised the amount of bonds that it expected to issue to \$32,100,000. See NKWD’s Draft Plan of Finance at 1 (filed Oct. 25, 2010); VR: 10/27/10; 11:35:55-11:36:21. Because the exact cost of issuance, interest rate, and other factors are not known until the sale of the bonds, NKWD requests approval for an approximate range of bonds, not a specific amount. Prefiled Testimony of Keith Brock at 3.

<sup>3</sup> NKWD’s Draft Plan of Finance at 2-3 (filed Oct. 25, 2010).

<sup>4</sup> NKWD’s Application, Exhibit B; Prefiled Testimony of Keith Brock at 3.

<sup>5</sup> NKWD’s Draft Plan of Finance at 2-3 (filed Oct. 25, 2010). This amount assumes that NKWD will issue \$32,100,000 of revenue bonds.

6. NKWD will use the proceeds from the proposed bond issuance to retire \$29,160,000 of bond anticipation notes ("BAN") that NKWD issued on November 12, 2009 and that mature on November 1, 2011; to pay issuance costs of 757,828; and to make a deposit of \$2,425,173 to its Debt Service Fund.<sup>6</sup>

7. NKWD used \$27,727,634 of the proceeds of the 2009 BAN issuance to fund improvements to its water treatment plants and to its water distribution system.<sup>7</sup>

8. The proposed issuance is for a lawful object within NKWD's corporate purposes, is necessary and appropriate for and consistent with the proper performance by NKWD of its service to the public, and will not impair its ability to perform that service and is reasonably necessary and appropriate for such purpose.

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<sup>6</sup> NKWD's Response to Commission Staff's Second Request for Information, Item 2 (filed Aug. 17, 2010); VR: 10/27/10; 11:44:30-11:45:00. These amounts are based upon an issuance of \$32,100,000 of revenue bonds. Total estimated cost of retiring the 2009 BANs is \$29,281,500. Issuance costs include underwriter's discount, cost of issuance and rounding amount. NKWD also assumes the transfer of \$364,000 from Prior Issue BCF Funds.

<sup>7</sup> For a listing of the 55 improvement projects funded wholly or in part with BAN proceeds, see NKWD's Application, Exhibit O. The Commission has issued Certificates of Public Convenience and Necessity for five of these projects. See Case No. 2010-00093, Application of Northern Kentucky Water District for Approval of the Memorial Parkway Treatment Plant Advanced Treatment Facility Phase III and Issuance of a Certificate of Public Convenience and Necessity (Ky. PSC Apr. 21, 2010); Case No. 2010-00038, Application of Northern Kentucky Water District for Approval of Construction of Pretreatment Building Improvements at Memorial Parkway Treatment Plant and Issuance of a Certificate of Convenience and Necessity (Ky. PSC Apr. 21, 2010); Case No. 2009-00361; Application of Northern Kentucky Water District for Approval of Construction of Water Main and Issuance of a Certificate of Public Convenience and Necessity (Ky. PSC Nov. 5, 2009); Case No. 2009-00255, Application of Northern Kentucky Water District for Approval of Construction of Filters and Building Improvements at Fort Thomas Treatment Plant and Issuance of a Certificate of Convenience and Necessity (Ky. PSC Sep. 9, 2009); Case No. 2008-00188, Application of Northern Kentucky Water District for Approval of Construction of Pretreatment Building Improvements at Fort Thomas Treatment Plant and Issuance of a Certificate of Convenience and Necessity (Ky. PSC Aug. 13, 2008).

IT IS THEREFORE ORDERED that:

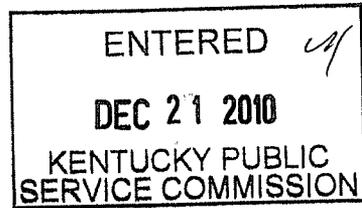
1. NKWD is authorized to issue no more than \$32,500,000 of Water District Revenue Bonds, Taxable Build America Bond Series 2010.
2. The proceeds of the issuance authorized herein shall be used only for the purposes set forth in NKWD's application.
3. Within 30 days of the sale of the proposed bonds, NKWD shall file with the Commission a final version of its Plan of Finance in the same format as found in Exhibit A of NKWD's Application.
4. Any documents filed pursuant to ordering paragraph 3 of this Order shall reference the number of this case and shall be retained in the utility's general correspondence file.<sup>8</sup>

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<sup>8</sup> As the Commission prepared to issue this Order this afternoon, NKWD filed a letter from its financial advisor in which he implies that the proposed "Build American Bonds" cannot be sold and delivered before December 31, 2010 and is therefore no longer viable. This letter represents the first notice to the Commission of any timing problems involving the proposed bond issuance. Prior to this date, NKWD has not expressly advised the Commission of a specific date when a Commission ruling on its application for authority to issue the proposed bonds was needed. Although providing the Commission with a letter from its financial advisor that such authorization would be needed by mid-December 2010, it never expressly requested the issuance of an Order by that date nor moved for interim Order granting such relief. See letter from Mr. Keith Block, Ross, Sinclair & Associates, LLC, to Mr. Jack Bragg, NKWD (Nov. 1, 2010). The letter that the NKWD provided was part of a 272-page response to information requests and was tentative in nature. On December 14, 2010, its counsel telephoned counsel for Commission Staff and advised him that the water district required an Order authorizing the bond issuance within seven to ten days before the last day of 2010. This telephone conversation represented the first direct request from the water district regarding the timing requirements for issuance of a decision on the proposed bond issuance. We note that applicants have a responsibility to inform the Commission of any practical and regulatory deadlines.

Nothing contained herein shall be construed as approval of any other portion of NKWD's application or deemed a warranty or finding of value of securities or financing authorized herein on the part of the Commonwealth of Kentucky or any agency thereof.

By the Commission



ATTEST:

  
Executive Director

Jack Bragg  
Northern Kentucky Water District  
2835 Crescent Springs Road  
P. O. Box 18640  
Erlanger, KY 41018-0640

Honorable John N Hughes  
Attorney at Law  
124 West Todd Street  
Frankfort, KY 40601

Heather Kash  
Office of the Attorney General Utility & Rate  
1024 Capital Center Drive  
Suite 200  
Frankfort, KY 40601-8204

Hon. Duane R Skavdahl  
300 Buttermilk Pike  
Suite 324  
Ft. Mitchell, KY 41017

Honorable David Edward Spenard  
Assistant Attorney General  
Office of the Attorney General Utility & Rate  
1024 Capital Center Drive  
Suite 200  
Frankfort, KY 40601-8204