

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|                                     |   |            |
|-------------------------------------|---|------------|
| APPLICATION OF THE ADAIR COUNTY     | ) |            |
| WATER DISTRICT FOR A CERTIFICATE OF | ) |            |
| PUBLIC CONVENIENCE AND NECESSITY    | ) | CASE NO.   |
| TO CONSTRUCT, FINANCE, AND          | ) | 2014-00218 |
| INCREASE RATES PURSUANT TO KRS      | ) |            |
| 278.023                             | ) |            |

ORDER

On July 23, 2014, the Public Service Commission (“Commission”) issued an Order which granted Adair County Water District (“Adair District”) a Certificate of Public Convenience and Necessity to construct a water and sewer system improvements project, approved its plan to finance the project pursuant to KRS 278.023, and approved a rate increase.

The originally approved project comprised three discrete projects identified as Contract No. 1, Contract No. 2, and Contract No 3. In Contract No. 1, Adair District proposed to construct sludge-conditioning system upgrades at the Columbia Wastewater Treatment Plant. Contract No. 2 included the installation of 1,950 linear feet of eight-inch polyvinyl chloride (“PVC”) sanitary sewer line, 550 linear feet of four-inch PVC sewer force main, four lift station replacements, and ten manholes and appurtenances. Contract No. 3 encompassed the rehabilitation of the Lindsay Wilson Water Storage Tank.

On August 13, 2014, Adair District filed a motion to amend the Commission's July 23, 2014 Order.<sup>1</sup> In its motion, Adair District stated that on or about August 4, 2014, the low bidder on Contract No. 1 withdrew its bid.<sup>2</sup> Due to this event, Adair District seeks authorization to: (1) award Contract No. 1 to the second low bidder; (2) withdraw Contract No. 3 from the approved water and sewer systems project; and (3) substitute the revised final project budget for the budget originally filed in this case.<sup>3</sup>

The Commission will treat Adair District's request to amend its Order as a motion for rehearing pursuant to KRS 278.400. In support of its request, Adair District submitted, among other items, the Final Engineering Report, revised in August 2014, which includes a letter from the project engineer. The engineer, Lee Mudd, explains the bidding process in the letter and notes that upon initially bidding all three projects, the lowest bids together resulted in a total construction cost of \$2,595,153.00 and a total project cost of \$3,275,000.00. He states that as the entire project funding at that time was only \$2,525,000.00, there was a budget shortfall of \$750,000.00.

Due to the budget deficit, Adair District sought and acquired additional funding from the Economic Development Administration and U.S.D.A. Rural Development ("RD"). However, the time it took for Adair District to acquire this additional funding resulted in its inability to award the contracts before the bid expiration date of July 22, 2014. Although Adair District had a verbal agreement with each low bidder to extend the proposed bids, the low bidder on Contract No. 1, Cleary Construction, formally withdrew its bid on August 5, 2014.

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<sup>1</sup> Motion to Amend Order (filed Aug. 13, 2014).

<sup>2</sup> *Id.* at 1.

<sup>3</sup> *Id.* at 2.

Mr. Mudd explains that the next lowest bidder on Contract No. 1, Herrick Company, Inc., agreed to accept the contract award for its original bid of \$1,882,200.00. However, accepting this bid in combination with the bids for the two other contracts would result in a total project cost of \$3,510,000.00, creating a \$235,000.00 funding shortfall. Based on this, Mr. Mudd recommends that the rehabilitation of the Lindsay Wilson water storage tank be postponed until additional funds become available. Finally, Mr. Mudd notes that Caldwell Tanks, Inc., the low bidder for Contract No. 3, has agreed to extend its original bid for an additional ten months. Accordingly, Mr. Mudd states that if Contracts No. 1 and No. 2 are within budget, without the need for significant contingency funds, adequate funding may be available to complete Contract No. 3 at a later date, contingent upon approval of RD and the Commission.

Adair District submitted an amended budget incorporating the revised project costs without Contract No. 3. It also filed a letter from RD approving the withdrawal of Contract No. 3 and the award of Contract No. 1 to the second low bidder, Herrick Company, Inc.

Adair District's initial and amended applications were submitted pursuant to KRS 278.023. KRS 278.023 requires the Commission to accept agreements between water districts and RD regarding construction projects. KRS 278.023 does not grant the Commission any discretionary authority to modify or reject any portion of the agreement between RD and Adair District, or to defer the issuance of all necessary orders to implement the terms of that agreement. It further denies the Commission any authority to reject an application when the evidence of record indicates that a water district's proposed facilities will result in the wasteful duplication of facilities or excessive

investment or its proposed rates are unfair, unjust, or unreasonable. The Commission, therefore, is not able to review this request using the same standards that are used for applications that are not filed pursuant to KRS 278.023. Accordingly, in consideration of RD's approval of Adair District's modified proposal, the Commission finds that Adair District's requests should be granted.

IT IS THEREFORE ORDERED that:

1. Adair District's motion for rehearing is granted.
2. Adair District is authorized to award Contact No. 1 to the second low bidder, Herrick Company, Inc.; to withdraw Contract No. 3 from the water and sewer systems project; and to substitute the revised final project budget for the budget originally filed in this case.
3. If surplus funds remain after the approved construction has been completed, Adair District may use such surplus to construct additional plant facilities if RD approves of the use and the additional construction will not result in a change in Adair District's rates for service. Adair District shall provide written notice of this additional construction in accordance with 807 KAR 5:069, Section 4.
4. Except as modified herein, the terms of the Commission's July 23, 2014 Order shall remain in full force and effect.

By the Commission

ENTERED  
**AUG 26 2014**  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
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Executive Director

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