

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF MOUNTAIN WATER DISTRICT)	CASE NO.
FOR MODIFICATION OF ORDER IN CASE NO.)	2016-00062
2014-00342)	

ORDER

On October 9, 2015, the Commission entered an Order in Case No. 2014-00342 that, among other things, set new water and sewer rates for Mountain Water District (“Mountain District”), required Mountain District to conduct a water loss study, and required Mountain District to issue a request for proposal (“RFP”) to solicit bids from firms interested in providing managerial and operational services to Mountain District.¹ Specifically, with regard to the RFP, Mountain District was required to first obtain the services of an outside independent consultant within 180 days of the date of the Order to assist in the preparation and issuance of the RFP and analysis and documentation of bids received.² Mountain District was required to thereafter submit to the Commission a written report that discussed the results of the RFP solicitation and a detailed analysis supporting Mountain District’s decision within 240 days of the date of the Order.³

On October 28, 2015, Mountain District filed an application for rehearing of the October 9, 2015 Order.⁴ In its request for rehearing, Mountain District sought

¹ Case No. 2014-00342, *Application of Mountain Water District for an Adjustment of Water and Sewer Rates* (Ky. PSC Oct. 9, 2015).

² *Id.* at 38.

³ *Id.*

⁴ *Id.*, Mountain District Application for Rehearing (filed Oct. 28, 2015).

modification or clarification regarding the water loss study and the RFP.⁵ Mountain District requested a modification of the time line for completing the water loss study.⁶ We determined that Mountain District presented good cause to modify the time line for Mountain District's requirement regarding the water loss plan Order by the Commission.⁷ With regard to the rehearing request regarding the RFP, Mountain District stated:

The management agreement with UMG [Utility Management Group] expires on December 31, 2016. Notice of termination requires 180 days' notice, but no sooner than January 1, 2016. Because the MWD Board of Commissioners must assess the appropriateness of renewal of the management contract to meet the contractual timeline, MWD seeks modification of the October 9, 2015 order to delete the requirement of issuance of an RFP and the submission of a written report on the analysis of the RFP or clarification that such requirements are unnecessary if the Board adopts a resolution prior to January 1, 2016, to terminate the current management contract and to resume management of the operations of the district with employees of the district. Should the Board act to employ *[sic]* staff for its operations, rather than to contract for those services, the need for an RFP will be unnecessary and generate an expense with no benefit.⁸

We denied Mountain's District request to modify the RFP requirement.⁹ We stated, in pertinent part:

As noted in the Commission's October 9, 2015 Order, in the last ten years Mountain Water has not issued an RFP or "attempt[ed] to conduct a benefit analysis to show that the outsourcing of its operations to UMG is beneficial to its ratepayers." The RFP is necessary to assess the potential costs of operating the district, particularly in consideration of the passage of a decade since the contract was last bid. While Mountain Water

⁵ *Id.* at 1–3.

⁶ *Id.* at 2 and 3.

⁷ *Id.*, Order (Ky. PSC Nov. 17, 2015) at 3.

⁸ *Id.*, Mountain District Application for Rehearing (filed Oct. 28, 2015) at 3.

⁹ *Id.*, Order (Ky. PSC Nov. 17, 2015) at 6.

contends that the RFP would be unnecessary should it choose to perform its operations internally, the RFP would clearly still provide useful information for Mountain Water in assessing the most reasonable and cost-effective means for operating the district.

Moreover, Mountain Water has not presented any evidence or made any showing that conducting an RFP would be especially onerous in regards to costs or resources. Conversely, the Commission finds that the RFP will provide value by enabling Mountain Water and its ratepayers to learn whether the UMG's continued operation of the utility is in the ratepayers' best interest. It will further provide valuable information for Mountain Water to utilize in ultimately assessing the efficacy of conducting its operations with its own employees. A utility board fully informed as to the range of methods and costs of operating its district will serve its ratepayers in the most transparent and cost-effective manner.¹⁰

On January 29, 2016, Mountain District filed a Petition for Modification of Order ("Petition") through which it again requests a modification of the portion of the our October 9, 2015 Order that requires Mountain District to prepare and issue an RFP. In support of its Petition, Mountain District states the following. On November 25, 2015, Mountain District formed a committee to conduct a search for the consultant.¹¹ Mountain District sent out an RFP for consulting services to six firms based on recommendations from Mountain District's engineers.¹² Mountain District also sent an RFP to The Prime Group, LLC ("The Prime Group").¹³ Mountain District did not receive a response from three of the firms identified by its engineers, and Mountain District

¹⁰ *Id.* at 4 and 5.

¹¹ Mountain District Petition (filed Jan. 29, 2016) at 2.

¹² *Id.* at 3.

¹³ *Id.*

received declinations from the remaining three firms identified by its engineers.¹⁴ Mountain District received a response from The Prime Group.¹⁵

Per Mountain District, The Prime Group stated, assuming that Mountain District approved the bid, that its bid was contingent upon the Commission's extending its timeline by about 15 days.¹⁶ The Prime Group estimated its costs as between \$65,000 and \$75,000, with a price not to exceed \$90,000.¹⁷

In support of its Petition, Mountain District further states that its current contract with UMG does not contain an automatic renewal or termination provision and will expire on December 31, 2016.¹⁸ On January 20, 2016, the Board of Commissioners ("Board") of Mountain District voted unanimously to terminate the current contract with UMG.¹⁹ Mountain District identifies management issues and cost savings as factors in the decision to terminate.²⁰ Per Mountain District, a termination of the UMG contract requires 180 days' notice.²¹ Mountain District states that it gave notice to UMG on January 20, 2016; therefore, the contract with UMG will terminate on July 20, 2016.²² The current agreement with UMG will otherwise expire on December 31, 2016.²³

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 3.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 4 and 5.

²¹ *Id.* at 3 and 4.

²² *Id.* at 4.

²³ *Id.* at 3.

Mountain District states that having given notice of the termination of the UMG contract, there are now several issues to address.²⁴ Mountain District states that if it is required to complete the RFP process, key personnel at UMG that would otherwise return to Mountain District may try to stay with UMG.²⁵ Mountain District states that if it is required to complete the RFP process, it estimates that it will lose an estimated \$230,000 in cost savings and would have to spend up to an additional \$90,000 for consulting services.²⁶ Mountain District states:

The MWD board has discussed the benefits of the RFP required by the Commission. However, based on the limited response to the initial request, it appears that pursuit of this option will probably be unproductive. The cost of the effort as well as the possibility that there will be only a limited number of contractors that respond to the RFP makes the expense and delay unjustifiable. MWD is aware of only two utility management companies operating in eastern Kentucky — UMG and Veolia, which currently operates the Williamson, WV utility. Given the expectation of limited options for management and the board's strong desire to take back control of the district's operations, the RFP procedures mandated in the order will provide little if any benefit commensurate with the time and expense involved.²⁷

Mountain District asks for the Commission to modify its October 9, 2015 Order in Case No. 2014-00342 to "eliminate the immediate requirement for issuance of an RFP and written report on the options resulting from the RFP."²⁸ Mountain District states that it is willing to comply with the RFP requirements should Mountain District decide to seek

²⁴ *Id.* at 5.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 6.

²⁸ *Id.*

a contract operator in the future.²⁹ Mountain District argues that “[a]s long as the Board remains independent, the need for and benefit of an RFP for contract services is a moot issue.”³⁰

Having reviewed the Petition and being otherwise sufficiently advised, the Commission finds that the current record is inadequate and that further proceedings are necessary. The Commission finds that Mountain District should provide responses to the request for information attached hereto as an Appendix to this Order. The Commission finds that the record from Case No. 2014-00342, including the Post Case Referenced Correspondence file for that case, should be incorporated by reference into the record of the instant case.

The Commission HEREBY ORDERS that:

1. The record from Case No. 2014-00342, including the post case referenced correspondence file for that case, is incorporated by reference into the record of the instant case.

2. Mountain District shall file with the Commission, no later than 14 days from the date of this Order, the original and ten copies of the information listed in the Appendix to this Order.

3. a. Responses to requests for information shall be appropriately bound, tabbed and indexed and shall include the name of the witness responsible for responding to the questions related to the information provided.

²⁹ *Id.*

³⁰ *Id.*

b. 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 person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of the person's knowledge, information and belief formed after a reasonable inquiry.

c. Mountain District shall make timely amendment to any prior response if it obtains information which indicates that the response was incorrect when made or, though correct when made, is now incorrect in any material aspect.

d. For any request to which Mountain District fails or refuses to furnish all or part of the requested information, the party shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

e. Careful attention should be given to copied material to ensure that it is legible. When filing a paper containing personal information, Mountain District shall, in accordance with 807 KAR 5:001, Section 10(4), encrypt or redact the paper so that personal information cannot be read.

4. Mountain District shall serve a copy of any document required by or in response to this Order upon all other parties and the document or pleading shall be served upon all parties of record in accordance with 807 KAR 5:001, Section 4(8).

By the Commission

ENTERED
FEB 11 2016
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2016-00062 DATED **FEB 11 2016**

1. Provide a copy of the minutes of each regular or special meeting of the Board of Mountain District held from October 9, 2015, to date. Include with the response, for each meeting, a copy of any materials distributed or presented to the Board during the meeting.

2. Provide a copy of the minutes of each regular or special meeting of the Mountain District committee formed to conduct a search for a consultant held from November 25, 2015, to date. Include with the response, for each meeting, a copy of any materials distributed or presented to the Committee during the meeting.

3. State whether Mountain District advertised for or otherwise solicited the services of an independent consultant through water or wastewater industry publications, message boards, or newsletters. If so, provide a copy of each advertisement or solicitation. If not, state why not.

4. Provide a copy of the correspondence between Mountain District and its engineers relating to the six firms identified in Mountain District's Petition as having had been recommended by Mountain District's engineers.

5. Describe the process through which The Prime Group was identified as a firm that would be sent a request.

6. Provide a copy of all correspondence between Mountain District and the six firms identified by its engineers and a copy of all correspondence between Mountain District and The Prime Group.

7. State whether Mountain District provided a written notice of termination to UMG. Provide a copy of all correspondence between Mountain District and UMG from October 9, 2015, to date.

8. Provide a complete copy of the work papers, calculations, and assumptions that Mountain District used to develop the financial analysis supplied by and discussed in its Petition.

9. Provide a complete copy of any analysis performed by or on behalf of Mountain District relied upon by Mountain District in making its decision to terminate the contract with UMG.

10. Mountain District states that “[i]t is willing to comply in full with the RFP requirements should a decision to seek contract operator be made at a future date.”³¹ Mountain District also states that “[t]he cost of the effort as well as the possibility that there will be only a limited number of contractors that respond to the RFP makes the expense and delay unjustifiable.”³² Setting aside for the purpose of responding to this question the issues of expense and delay, state whether it is Mountain District’s position that an RFP that is issued in the future will result in a greater number of contractors that respond to the RFP. Fully explain the factors and assumptions that Mountain District believes support the premise that an RFP issued in the future would provide more information or generate more options than an RFP issued in compliance with the Commission’s October 9, 2015 Order in Case No. 2014-00342.

³¹ Mountain District Petition at 6.

³² *Id.*

11. State whether Mountain District believes that conducting its operations with its own employees is the most reasonable and cost-effective means for operating the District. Provide a copy of any analysis or documentation relied upon by Mountain District in support of its position.

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