

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE PETITION OF THE HARDIN COUNTY WATER)	
DISTRICT NO. 1 FOR A CERTIFICATE OF)	
CONVENIENCE AND NECESSITY; APPROVAL OF)	
FINANCING OF THE CONSTRUCTION AND THE)	CASE NO.
ISSUANCE OF BONDS; AND THE APPROVAL OF)	90-019
RATES TO BE CHARGED ITS RETAIL AND)	
WHOLESALE CUSTOMERS)	

O R D E R

Before the Commission are several outstanding motions. At hearing Hardin County Water District No. 2 ("Hardin District No. 2") moved for a Commission Staff Report on the rate application, to strike the cost-of-service study presented by Hardin County Water District No. 1 ("Hardin District No. 1"), and to disallow the inclusion of all or certain costs of the proposed construction project in its rates. On October 16, 1990, Hardin District No. 1 moved for an immediate ruling on its application for a Certificate of Public Convenience and Necessity, for suspension of the procedural schedule in this case, and for leave to withdraw its Exhibit No. 4. On October 29, 1990, Joseph Janes moved for dismissal of Hardin District No. 1's application. For reasons stated herein, the Commission grants Hardin District No. 1's motion to withdraw its Exhibit No. 4, but denies all others.

The Commission first addresses the motions of Hardin District No. 2. Hardin District No. 2 has requested that Commission Staff conduct a study of Hardin District No. 1's application and prepare

a written report. More specifically, it requests that Commission Staff perform a billing analysis, revenue requirement analysis, and a cost-of-service study on Hardin District No. 1. It maintains that such studies and written report are needed because the information presented by Hardin District No. 1 is incomplete, contradictory, and of questionable quality. Only a Commission Staff Report based upon an extensive review of Hardin District No. 1's records, Hardin District No. 2 contends, can present a clear picture of Hardin District No. 1's actual financial condition.

The Commission does not share this view and finds no need for such report. Hardin District No. 1 has assembled and submitted a large amount of data in support of its application. The intervenors and the Commission have conducted extensive discovery and performed lengthy cross-examination of Hardin District No. 1's witnesses. The present record is sufficient to assess the accuracy and reliability of the utility's evidence.

Granting Hardin District No. 2's motion, furthermore, will unduly delay these proceedings. It will take several months for Commission Staff to prepare the requested report. Upon the report's issuance, discovery and additional hearings would be necessary. It is unlikely that, if a Commission Staff report is prepared, a decision on Hardin District No. 1's application could be rendered within the statutory time period.

Hardin District No. 2 next moves that the cost-of-service study submitted by Hardin District No. 1 be stricken from the record. It argues that Lee Brecher, the author of that study, is

not qualified to prepare such study and that the data upon which he relied was unreliable.¹

These arguments go more to weight to be afforded the study than its admissibility. The Commission is aware of no requirement for an expert to prepare a cost-of-service study nor do we intend to create such a requirement at this time. Clearly, the report is relevant to the issues before the Commission. Given the relaxed rules of evidence for Commission proceedings, KRS 278.310, and past Commission practice, the Commission finds that this motion should be denied. Our action, however, should not be construed as a decision to ignore Mr. Brecher's qualifications when we consider the rate design issues presented by Hardin District No. 1's application.

Lastly, Hardin District No. 2 moves for disallowance of the inclusion of all costs associated with Hardin District No. 1's proposed construction project from its rates or, in the alternative, of the inclusion of all costs associated with the construction of the proposed Whispering Hills construction project. It argues that none of the evidence at hearing shows that this construction will serve or benefit Hardin District No. 2. The cost associated with this construction, therefore, should not be passed on to it. The record, however, contains conflicting evidence on this issue. Accordingly, the Commission denies this

¹ Transcript II, pp. 165-166.

motion but will revisit this issue when all parties have had the opportunity to address it in their briefs.

We next turn to the motions of Hardin District No. 1. It seeks an immediate ruling on its application for a Certificate of Public Convenience and Necessity for its proposed construction. In support of its motion, it argues that no evidence was presented at hearing to dispute the need for the proposed construction or its technical feasibility. It states that approval of the proposed construction will allow it to immediately proceed with various phases of the project including easement acquisitions, condemnation actions, bid proposals, and final engineering details and will ensure that the expenses associated with these matters will be covered through the financing of the project and will not be needlessly incurred.

Hardin District No. 1 also moves for suspension of the established briefing schedule pending a decision on its application for a certificate. It argues that because of the lack of any witnesses opposing the proposed project, no briefing schedule is required. The matter may be decided based solely on review of the application and evidence submitted at the hearing. As the technical feasibility of the proposed construction is a matter of engineering expertise, it maintains that Commission Staff is fully capable of analyzing the proposed construction without the aid of written briefs. Suspension of the briefing schedule would, furthermore, avoid needless expense to all parties.

The Commission finds that both motions should be denied. Suspension of the briefing schedule will deny the parties the right to due process under the law. Due process requires that the views of all parties must be heard. Furthermore, no economy is achieved by Hardin District No. 1's proposed course of action. Hardin District No. 1 has acknowledged that it will not begin construction until the issuance of a final order. An immediate decision will not, therefore, hasten the proposed construction.

Hardin District No. 1 also moves for leave to withdraw its Exhibit 4, a mounted map of its water system. No party objects to this motion. As Hardin District No. 1 has filed a suitable substitute for Exhibit 4, and as withdrawal of that exhibit will not materially affect the record of this case, the Commission finds that this motion should be granted.

The final motion concerns Joseph Janes' motion to dismiss Hardin District No. 1's application. As grounds for his motion, Mr. Janes contends that the water district's present rates are adequate to meet its revenue requirements, that the engineering study submitted in support of the water district's application for a Certificate of Public Convenience and Necessity is lacking in certain respects, and that the water district has impaired the intervenors' ability to participate in Commission proceedings by denying them access to information sought pursuant to the Kentucky Open Records Act, KRS 61.870 et seq. The Commission finds the record contains evidence which contradicts Mr. Janes' first two contentions. We further find that his contention concerning denial of access to information is irrelevant. Requests for

information under the Kentucky Open Records Act fall outside Commission jurisdiction. The Commission notes that Mr. Janes has fully participated in the discovery process established for this proceeding. Furthermore, his motion does not allege that Hardin District No. 1 failed to comply with any procedural or discovery order of the Commission.

IT IS THEREFORE ORDERED that:

1. Hardin District No. 2's motions for a Commission Staff Report on Hardin District No. 1's rate application, to strike its cost-of-service study, and to disallow the inclusion of all or certain costs of the proposed construction project in its rates are denied.

2. Hardin District No. 1's motions for an immediate ruling on its application for a Certificate of Public Convenience and Necessity and for suspension of the procedural schedule are denied.

3. Hardin District No. 1's motion to withdraw its Exhibit No. 4 is granted.

4. Joseph Janes' motion to dismiss the application of Hardin District No. 1 is denied.

Done at Frankfort, Kentucky, this 30th day of November, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director