

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF NORTHERN KENTUCKY)	
WATER DISTRICT (A) FOR AUTHORITY TO ISSUE)	
PARITY REVENUE BONDS IN THE APPROXIMATE)	CASE NO. 2000-481
AMOUNT OF \$16,545,000; AND (B) A CERTIFICATE)	
OF CONVENIENCE AND NECESSITY FOR THE)	
CONSTRUCTION OF WATER MAIN FACILITIES)	

O R D E R

In our Order of August 30, 2001, the Commission addressed the question of when a Certificate of Public Convenience and Necessity is required. Northern Kentucky Water District ("NKWD") moves for reconsideration and clarification of certain holdings within that Order. By this Order, we clarify those holdings.

NKWD first requests clarification on the scope of the Commission's review for construction projects that are financed through the proceeds of a bond anticipation note ("BAN"). It states that BAN proceeds fund "a number of projects, not individual extensions or facilities." NKWD Request at 1. It asks whether the scope of Commission review in determining whether KRS 278.020(1) requires a Certificate of Public Convenience and Necessity will focus upon the effect of the issuance of the BAN or upon the cost of the individual project.

The Commission is of the opinion that the scope of any review is on the individual project, not on all projects contained within a particular financing package. We noted in our Order of August 30, 2001 that "[t]he method used to finance the cost of proposed facilities does not determine whether those facilities require a Certificate of

Public Convenience and Necessity.” Order at 4. The projects financed through the BAN proceeds will be examined individually unless the projects are directly related. For example, if several construction projects are proposed to upgrade and improve a water treatment plant and each project is essential to the implementation or operation of the other projects, we will consider these projects as one project when determining whether a Certificate of Public Convenience and Necessity is required. A utility is not required to obtain a Certificate for a project merely because it is funded through the issuance of a BAN that will eventually be refinanced through the issuance of revenue bonds whose issuance may require an adjustment of the utility’s rates.

NKWD further requests clarification on the level of financial outlay that constitutes a “material effect” on a utility’s financial condition. We are unable to provide a specific level of financial outlay. A determination of whether a proposed project will have a material effect on a utility depends upon the circumstances of the project and the utility. Each project must be addressed on its particular facts.

Our review of NKWD’s Request for Clarification indicates that NKWD misinterpreted our Order of August 30, 2001. In that Order we stated:

In those instances where the Commission has issued a Certificate of Public Convenience and Necessity for the construction of a facility, the Commission has determined that the facility’s construction is reasonable. The utility can construct the facility with reasonable certainty that the costs associated with the facility will be recovered through its rates. For those facilities for which no certificate is obtained, a determination on the reasonableness of a utility’s decision to construct those facilities is not made until the utility’s next application for rate adjustment or for authorization to issue long-term debt instruments to finance the facility’s construction. Such application may not be made until the facilities in question are constructed. In those instances, the utility has no assurance at the time of construction that the

Commission will permit recovery of the facility's costs through the utility's rates.

Order at 6. NKWD misinterprets this statement to mean that it is at significant "risk of disallowance of part or all of its funding, if in hindsight, the Commission disallows . . . [its] projects because a certificate was not obtained or should have been obtained prior to its initiation." NKWD's Request at 3.

We did not state in our Order nor do we take the position that the costs of a utility facility or system improvement may be disallowed in a rate proceeding merely because of the utility's failure to obtain a Certificate for the facility or system improvement. Such action would constitute an assessment in excess of that provided in KRS 278.990(1) and would be unlawful. See South Central Bell Telephone Co. v. Utility Regulatory Commission, Ky., 637 S.W.2d 649 (1982).¹

In our Order of August 30, 2001, we simply restated a basic concept of utility law. A utility is only permitted recovery through rates of reasonably incurred expenses. If the Commission has issued a Certificate for the construction of a utility facility, that facility and its associated expenses are presumed to be reasonable. If no Certificate has been issued, then we must review the reasonableness of the facility and its associated costs at the utility's next rate proceeding before allowing those costs to be recovered through the utility's rates. If we find that the facility's construction was reasonable, then we must allow recovery of the costs associated with that facility. Application of this concept does not subject NKWD or any other utility to significantly greater risks.

¹ Failure to comply with KRS 278.020(1) may subject a utility or its officials to civil penalties if a willful or knowing failure to comply with the statute is shown.

IT IS THEREFORE ORDERED that:

1. NKWD's Request for Reconsideration and Clarification is granted.
2. Our Order of August 30, 2000 is modified to reflect the holdings contained herein.

Done at Frankfort, Kentucky, this 8th day of October, 2001.

By the Commission

ATTEST:


Executive Director