

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF MARTIN COUNTY WATER	)	
DISTRICT FOR A CERTIFICATE OF PUBLIC	)	
CONVENIENCE AND NECESSITY TO	)	CASE NO. 2004-00292
CONSTRUCT IMPROVEMENT PROJECTS	)	
PURSUANT TO KRS 278.020	)	

O R D E R

Martin County Water District ("Martin District") has applied for a Certificate of Public Convenience and Necessity to construct approximately 4,712 linear feet of 6-inch polyvinyl chloride ("PVC") water main and 76,162 linear feet of 4-inch PVC water main in certain portions of Martin County, Kentucky, make certain improvements to its Meathouse Pump Station, and replace valves and meters throughout its water system. The estimated total cost of these improvements, including related appurtenances, is \$1,792,873. Martin District does not propose to issue any evidences of indebtedness or securities or adjust existing rates for water service to finance the improvements. It proposes to finance the proposed project through grant funds from the Kentucky Infrastructure Authority. The proposed facilities will not provide water service in areas that other utilities are presently serving.

KRS 278.020(1) provides:

No person, partnership, public or private corporation, or combination thereof shall begin the construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in KRS 278.010, except retail electric suppliers for service connections to electric-consuming facilities located within its certified territory and

ordinary extensions of existing systems in the usual course of business, until such person has obtained from the Public Service Commission a certificate that public convenience and necessity require such construction.

807 KAR 5:001, Section 9(3), further provides:

Extensions in the ordinary course of business. No certificate of public convenience and necessity will be required for extensions that do not create wasteful duplication of plant, equipment, property or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general area in which the utility renders service or contiguous thereto, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

Under the method of analysis that the Commission has historically employed, the proposed construction would require a Certificate of Public Convenience and Necessity. According to its Annual Report for Calendar Year 2001, Martin District had a net utility plant of \$13,563,070.<sup>1</sup> The proposed construction, therefore, represents an overall increase of 13.24 percent in Martin District's net utility plant. Such a large increase in net utility plant is not normally considered as ordinary. See, e.g., City of Covington v. Board of Commissioners of Kenton County Water District No. 1, 371 S.W.2d 20 (Ky. 1963).

While Martin District's application has been pending before the Commission, however, the Kentucky General Assembly enacted legislation that exempted certain

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<sup>1</sup> See Annual Report of Martin County Water District to the Public Service Commission for the Year Ended December 31, 2001 at 7. This report is the most recent report of the water district's financial condition on file with the Commission. Although 807 KAR 5:006, Section 3(1), requires a utility to file annually with the Commission a financial and statistical report of its operations, Martin District has not filed such a report for any calendar year since 2001.

water improvement projects from the requirement for a Certificate of Public Convenience and Necessity. This Act provides:

**Water Districts and Water Associations:** A water district created pursuant to KRS Chapter 74 and a water association created pursuant to KRS Chapter 273 that undertakes a waterline extension or improvement project **shall not be required to obtain a certificate of public convenience and necessity pursuant to KRS 278.020(1)** if the water district or water association is a Class A or B utility as defined in the Uniform System of Accounts established by the Public Service Commission, pursuant to KRS 278.220, as the system of accounts prescribed for utilities in Kentucky, and either: (a) The water line extension or improvement project will not cost in excess of \$500,000; or (b) **The water district or water association will not, as a result of the water line extension or improvement project, incur obligations requiring Public Service Commission approval pursuant to KRS 278.300.** In either case, the water district or water association shall not, as a result of the water line extension or improvement project, increase rates to its customers.

2005 Ky. Acts Chapter 173 (emphasis added).<sup>2</sup>

Based upon our review of this Act, we find that the proposed construction is exempt from any requirement to obtain a Certificate of Public Convenience and Necessity. As Martin District had annual revenues in calendar year 2001 in excess of \$750,000,<sup>3</sup> it is a Class A water utility.<sup>4</sup> The proposed extension will not require the issuance of any evidence of indebtedness that requires Commission authorization or

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<sup>2</sup> This Act became effective March 22, 2005 and will become ineffective on June 30, 2006.

<sup>3</sup> Id. at 29.

<sup>4</sup> National Association of Regulatory Utility Commissioners, Uniform System of Accounts for Class A/B Water Companies (1996) 15, (found at <http://psc.ky.gov/agencies/psc/forms/usoa/0600ab02.pdf>).

result in any increase in the water district's rates. See KRS 278.300. While the Commission recognizes that, as a result of the new legislation, Martin District may proceed to commence the proposed construction without first obtaining a Certificate of Public Convenience and Necessity, we are compelled to note our concerns regarding the proposed project. The record indicates that Martin District is currently operating at 90 percent of its water treatment capacity. The addition of 212 new customers without any corresponding increase in treatment capacity or water supply or without significant reduction in Martin District's present line loss, which exceeds 50 percent of total water produced,<sup>5</sup> is likely to reduce the quality and reliability of water service. Moreover, Martin District's failure to maintain adequate records or produce required financial reports draws into question its managerial and technical ability to address the challenges that the new construction will create. These concerns highlight the necessity for regulatory review and oversight.

Finding that the proposed project does not require a Certificate of Public Convenience and Necessity, the Commission, on its own motion, HEREBY ORDERS that this case is dismissed as moot and is removed from the Commission's docket.

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<sup>5</sup> This was the information given to Commission Staff by employees of Martin District during Commission Staff's most recent inspection conducted on January 10 and 11, 2005.

Done at Frankfort, Kentucky, this 22<sup>nd</sup> day of July, 2005.

By the Commission

ATTEST:

  
Executive Director