

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF OLDHAM COUNTY WATER)
DISTRICT FOR A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO) CASE NO. 2009-00436
CONSTRUCT, FINANCE AND INCREASE RATES)
PURSUANT TO KRS 278.023)

ORDER

On November 9, 2009, Oldham County Water District (“Oldham District”) applied, pursuant to KRS 278.023, for a Certificate of Public Convenience and Necessity to construct certain infrastructure improvements, authority to issue revenue bonds to Rural Development (“RD”), and an adjustment in rates for water service.

Having considered the application and other evidence of record¹ and being otherwise sufficiently advised, the Commission finds that:

1. Oldham District is a water district organized pursuant to KRS Chapter 74.
2. Oldham District provides retail water service to 7,697 customers in Oldham County, Kentucky and wholesale water service to Henry County Water District No. 2 and the city of LaGrange.²

¹ Oldham District is the only party in this proceeding. Shortly before Oldham District filed its application with the Commission, the Commission, pursuant to KRS 61.872, requested documents from Louisville Water Company (“LWC”) and Oldham District related to LWC’s proposals to provide wholesale water service to Oldham District. On November 30, 2009, the Commission’s Executive Director notified Oldham District in writing that the documents provided in response to the Commission’s requests had been made part of the record in this proceeding. On December 1, 2009, the Executive Director inquired in writing to RD regarding its review of Oldham District’s proposed project. RD’s response to this inquiry, which the Commission received on December 4, 2009, has been placed in the record of this proceeding.

² *Annual Report of Oldham County Water District to the Kentucky Public Service Commission for the Calendar Year Ended December 31, 2008* (hereinafter “*Annual Report*”) at 5, 27 and 29.

3. As of December 31, 2008, Oldham District had total assets and other debits of \$22,817,918.³

4. As of December 31, 2008, Oldham District had total equity capital of \$16,511,078, total long-term debt of \$5,487,500, and other liabilities of \$819,340.⁴

5. As of December 31, 2008, Oldham District had total utility plant of \$30,944,292, of which \$12,318,395 had been depreciated or amortized. It had a total net utility plant of \$18,675,897.⁵

6. In 2004, Oldham District commissioned GRW Engineers, Inc. ("GRW") to evaluate Oldham District's existing infrastructure, including its existing wells, treatment plant, and distribution system, and to develop a plan to meet existing and future water supply requirements.⁶

7. In December 2005, GRW published a plan for capital improvements to Oldham District's water distribution system. In its plan, GRW recommended several improvements to Oldham District's production, treatment and distribution system to be implemented in three phases over a 20-year period. These recommendations included the expansion of the capacity of Oldham District's existing water treatment facilities from 7 million gallons per day ("MGD") to 13 MGD. Estimated total cost of these improvements was \$23,473,967.⁷

³ *Id.* at 7.

⁴ *Id.* at 9.

⁵ *Id.* at 7.

⁶ GRW Engineers, Inc., *Capital Improvement Plan for Oldham County Water District* (Dec. 2005) at 2.

⁷ *Id.* at 7 – 9.

8. In this capital improvements plan, GRW did not examine or address the possibility of Oldham District purchasing a portion of its water requirements from Louisville Water Company (“LWC”) or other neighboring water systems.⁸

9. In October 2007, GRW prepared a study in which it identified several aspects of Oldham District’s existing production, treatment and distribution systems that were inadequate or incapable of meeting expected future demand and recommended several immediate improvements. These improvements, which it estimated to cost \$12,403,500, included the installation of two new well fields, the expansion of Oldham District’s existing treatment plant capacity from 7 MGD to 13 MGD, and the construction of a raw water transmission main and a high service transmission main.⁹ In this study, GRW did not examine or address the purchase of a portion of Oldham District’s water requirements from LWC or other neighboring water systems.

10. Since March 2007, LWC has discussed with Oldham District the possibility of LWC serving as a supplemental water supply source for Oldham District.

11. On April 25, 2007, LWC presented a proposal to Oldham District regarding LWC’s provision of wholesale service in lieu of Oldham District’s construction of additional production and treatment capacity.

⁸ In its *Capital Improvement Plan for Oldham County Water District*, GRW refers to a “water supply and treatment master plan” that was completed in March 2005 and that “evaluated alternatives for increasing available capacity to meet the future needs of the OCWD [Oldham District] service territory. *Id.* at 3. In its response to the Commission’s request for “all records related to the construction, design, and financing of the proposed project, the effect of such project on water service rates, and alternatives to the proposed project that the water district considered,” Oldham District did not provide this study. It did provide GRW’s proposed plan for improvements to Oldham District’s distribution system, which GRW published in November 2005. See GRW Engineers, Inc., *Master Plan – Water District System for Oldham County Water District* (Nov. 2005). This plan also fails to include any discussion regarding the use of neighboring utilities as a supplemental supply of water.

⁹ GRW Engineers, Inc., *Water System Preliminary Engineering Report - Oldham County Water District - GRW Project 3257-09* (Oct. 2007).

12. Oldham District commissioned the accounting firm of Ray, Foley, Hensley & Company to conduct a comparison of the costs of purchasing supplemental water from LWC and of expanding and upgrading Oldham District's production, treatment and distribution system. On August 31, 2007, the accounting firm reported to Oldham District that Oldham District's "cost of producing water is significantly less expensive than the cost of purchasing water from LWC" and that the LWC option was \$1.90 per 1,000 gallons more expensive.¹⁰

13. LWC subsequently commissioned Municipal and Financial Services Group ("MFSG"), a consulting firm, to evaluate and compare the cost of Oldham District's ownership of the proposed improvements with the cost of LWC serving as Oldham District's supplemental water supply.

14. In December 2008, MFSG issued a report¹¹ in which it found that the present value of the total cost of LWC serving as Oldham District's supplemental water supply was \$5 million less than the cost of Oldham District's ownership of the proposed improvements. MFSG noted that the differences in the total cost of the two options may be greater if Oldham District's projected demand is overstated. It also noted that "[p]revious analyses performed by others on behalf of Oldham County Water District did not appear to include several standard cost of ownership components for the OCWD Base Case while not including certain cost savings for the LWC Alternative."¹²

¹⁰ Memorandum from Jerry W. Hensley, Certified Public Accountant, to Oldham County Water District (Aug. 31, 2007).

¹¹ Municipal Financial Services Group, *Analysis of Oldham County Water District Projects* (Dec. 2008).

¹² *Id.* at 1.

15. In January 2009, LWC presented the MFSG report to Oldham District and subsequently provided the model that MFSG used to conduct its evaluation.

16. Questioning the validity of several of the assumptions contained in the MFSG report, Oldham District performed its own analysis using the MFSG model with revised assumptions and found the present value of the total cost of LWC serving as Oldham District's supplemental water supply was \$9 million more than the cost of Oldham District's ownership of the proposed improvements. The revised assumptions include the cost of certain of the originally proposed facilities that LWC asserted would be unnecessary if it served as a supplemental water supply.

17. LWC has questioned the use and validity of Oldham District's revised assumptions.

18. The record contains insufficient evidence to reasonably and accurately assess the analyses that LWC and Oldham District have commissioned or performed or to reasonably ascertain the least-cost alternative to Oldham District's water supply requirements.

19. In its application, Oldham District proposes to construct the facilities that GRW recommended in its preliminary engineering report of October 2007. These facilities include: two raw water wells, a new chemical building; high service pump station; 4,790 linear feet of 24-inch water main; 2,700 linear feet of 30-inch water main; and 14,700 linear feet of 36-inch water main. It also includes the expansion of the capacity of Oldham District's existing water treatment plant from 7 MGD to 13 MGD.

20. Oldham District estimates the total cost of the proposed project, including legal and administrative fees, engineering costs, and contingencies, to be \$15,423,508.

21. Oldham District proposes to finance the cost of the project with the proceeds of the issuance of Water Revenue Bonds to RD in the amount of \$13,243,100 and a grant of \$2,180,408 from the Kentucky General Assembly.¹³

22. The proposed construction represents an 82.6 percent increase in Oldham District's total net utility plant.

23. The proposed bond issuance represents an increase of 241 percent in Oldham District's outstanding long-term debt.

24. Oldham District proposes to increase its general rates to meet, *inter alia*, the required interest and principal payments on the proposed revenue bonds. The proposed rates will increase the monthly bill for a residential customer who uses 5,000 gallons of water by 27 percent. Oldham District proposes to increase its rate for wholesale water service by 39.3 percent and its rate for industrial customers by 126.4 percent.

25. Rural Development issued its letter of conditions to Oldham District on April 1, 2009 in which it agreed to finance the proposed project.

26. When applying to RD for funding for its proposed project, Oldham District did not submit any study or analysis that compared the cost of constructing and operating the proposed project with the alternative of Oldham District purchasing water from LWC under a long-term contract.¹⁴

¹³ 2009 Ky. Acts Ch. 51.

¹⁴ Electronic mail message from Kimberly McKay, Rural Development (Kentucky Office), to Gerald Wuetcher, Kentucky Public Service Commission (Dec. 4, 2009).

27. Oldham District did not present to RD any study or analysis in support of its application for funding that discusses the option of purchasing water from LWC.¹⁵

28. RD did not undertake any review to determine whether the proposed project was the least-cost alternative for meeting Oldham District's needs.¹⁶

29. RD did not undertake any review to compare Oldham District's cost of purchasing water from LWC under a long-term contract with Oldham District's cost to construct and operate the proposed facilities.¹⁷

30. In its application in this proceeding and the supporting documents thereto, Oldham District did not identify the use of LWC as supplemental water supply as an alternative to its water-supply requirements.

31. Oldham District's application meets the minimum filing requirements set forth in 807 KAR 5:069.

Based upon these findings, the Commission makes the following conclusions of law:

1. Oldham District is a utility subject to Commission jurisdiction.¹⁸
2. Oldham District is a person as defined in KRS 278.010(2).
3. KRS 278.020(1) provides that "[n]o 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 . . . ordinary extension of existing systems in the

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ KRS 278.015.

usual course of business, until that person has obtained from the Public Service Commission a certificate that the public convenience and necessity require the service or construction.”

4. A person must demonstrate a need for such facilities and an absence of wasteful duplication to obtain a Certificate.¹⁹

5. “Wasteful duplication” is “an excess of capacity over need” and “an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties.”²⁰

6. To demonstrate that a proposed facility does not result in wasteful duplication, an applicant must demonstrate that a thorough review of all alternatives has been performed.²¹

7. The Commission must consider existing municipal facilities when reviewing an application for a Certificate.²²

8. Notwithstanding KRS 278.020(1), KRS 278.023 requires the Commission to accept agreements between water districts and RD regarding construction projects

¹⁹ *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 252 S.W.2d. 885 (Ky. 1952).

²⁰ *Id.* at 890.

²¹ Case No. 2005-00142, *The Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky* (Ky. PSC Sept. 8, 2005).

²² See Case No. 1989-00014, *City of Newport v. Campbell County Kentucky Water District and Kenton County Water District No. 1* (Ky. PSC Jan. 31, 1990) at 24 (“Public policy further requires that the Commission consider municipal utility facilities when ruling upon applications for Certificates of Convenience and Necessity. To ignore the existence of such facilities when determining whether new utility facilities should be constructed, would encourage wasteful and uneconomic competition between regulated and nonregulated utilities and would likely lead to the proliferation of unnecessary utility facilities across the Commonwealth.”). See also Case No. 2007-00134, *The Application of Kentucky-American Water Company for a Certificate of Public Convenience and Necessity Authorizing the Construction of Kentucky River Station II, Associated Facilities and Transmission Main* (Ky. PSC Apr. 25, 2009) at 41.

and to issue the necessary orders to implement the terms of such agreements within 30 days of satisfactory completion of the minimum filing requirements.

9. KRS 278.023 is premised in part upon the assumption that “federal financing of such projects entails prior review and oversight by the federal agency.”²³

10. Despite the lack of federal agency review over Oldham District’s water supply alternatives in this case, KRS 278.023 does not grant the Commission any discretionary authority to modify or reject any portion of the agreement between RD and Oldham District or to defer the issuance of all necessary orders to implement that agreement’s terms.

11. KRS 278.023 further deprives the Commission of any authority to reject an application for a Certificate when the evidence of record indicates that a water district’s proposed facilities will result in the wasteful duplication of facilities or excessive investment.

IT IS THEREFORE ORDERED that:

1. Oldham District is granted a Certificate of Public Convenience and Necessity for the proposed infrastructure project.

2. Oldham District’s proposed plan of financing with Rural Development is accepted.

3. Oldham District is authorized to issue Water Revenue Bonds in the amount of \$13,243,100 at an interest rate not to exceed 4.625 percent per annum, maturing over a 40-year period.

²³ KRS 278.023(1).

4. The proceeds from the proposed bond issuance shall be used only for the purposes specified in Oldham District's application.

5. Notwithstanding Ordering Paragraph 4, if surplus funds remain after the approved construction has been completed, Oldham District may use such surplus to construct additional plant facility if RD approves of the use, and the additional construction will not result in a change in Oldham District's rates for service. Oldham District shall provide the Commission with written notice of this additional construction in accordance with 807 KAR 5:069, Section 3.

6. Oldham District shall file a copy of the "as-built drawings and a certified statement that the construction has been satisfactorily completed in accordance with the contract plans and specifications within 60 days of the substantial completion of the construction approved in this Order.

7. Oldham District shall monitor the adequacies of the expanded water distribution system after construction. If the level of service is inadequate or declining, or the pressure to any customer is outside the requirements of 807 KAR 5:066 Section 5(1), Oldham District shall take immediate action to ensure that the level of service conforms to Commission regulations.

8. Oldham District shall notify the Commission in writing one week prior to the actual start of construction and at the 50-percent completion point.

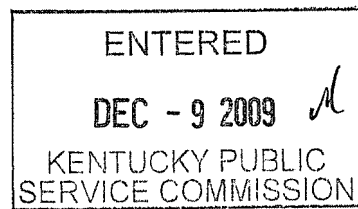
9. The rates set out in the Appendix to this Order are the rates approved for service that Oldham District renders on and after the date of this Order.

10. Within 30 days of the date of this Order, Oldham District shall file with the Commission its revised tariffs setting out the rates approved in this Order.

11. Three years from the date of this Order, Oldham District shall file with the Commission an income statement, along with any pro forma adjustments, in sufficient detail to demonstrate that the rates approved in this Order are sufficient to meet its operating expenses and annual debt service requirements.

Nothing contained in this Order shall be deemed a warranty of the Commonwealth, or any agency thereof, of the financing accepted herein.

By the Commission



ATTEST:

Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2009-00436 DATED

The following rates and charges are prescribed for the customers of Oldham County Water District. All other rates and charges not specifically mentioned herein shall remain the same as those in effect under authority of the Commission prior to the effective date of this Order.

5/8" Meter

Customer Charge	\$ 8.84
First 40,000 gallons	3.70 Per 1,000 Gallons
Over 40,000 gallons	3.35 Per 1,000 Gallons

3/4" Meter

Customer Charge	\$ 9.73
First 40,000 gallons	3.70 Per 1,000 Gallons
Over 40,000 gallons	3.35 Per 1,000 Gallons

1" Meter

Customer Charge	\$ 22.11
First 40,000 gallons	3.70 Per 1,000 Gallons
Over 40,000 gallons	3.35 Per 1,000 Gallons

1 1/2" Meter

Customer Charge	\$ 44.22
First 40,000 gallons	3.70 Per 1,000 Gallons
Over 40,000 gallons	3.35 Per 1,000 Gallons

2" Meter

Customer Charge	\$ 88.44
First 40,000 gallons	3.70 Per 1,000 Gallons
Over 40,000 gallons	3.35 Per 1,000 Gallons

3" Meter

Customer Charge	\$128.05
First 40,000 gallons	3.70 Per 1,000 Gallons
Over 40,000 gallons	3.35 Per 1,000 Gallons

Industrial Rate	\$ 3.35 Per 1,000 Gallons
Wholesale Rate	\$ 1.70 Per 1,000 Gallons

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