

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF MONROE COUNTY)	
WATER DISTRICT FOR AUTHORIZATION)	CASE NO. 2015-00315
TO ENTER AN ASSISTANCE AGREEMENT)	
WITH THE KENTUCKY INFRASTRUCTURE)	
AUTHORITY AND FOR A CERTIFICATE OF)	
PUBLIC CONVENIENCE TO CONSTRUCT)	
A WATER TREATMENT FACILITY,)	
ELEVATED STORAGE TANK, AND WATER)	
TRANSMISSION AND DISTRIBUTION MAINS))	

ORDER

On February 19, 2016, Monroe County Water District ("Monroe District") tendered an application seeking authorization to enter into an assistance agreement with the Kentucky Infrastructure Authority and for a Certificate of Public Convenience and Necessity ("CPCN"). On February 26, 2016, the filing was rejected due to filing deficiencies pursuant to 807 KAR 5:001, Section 15(2)(b), which requires "[c]opies of franchises or permits, if any, from the proper public authority for the proposed construction or extension, if not previously filed with the commission," and 807 KAR 5:001, Section 4(13), which requires that "[e]ach report, specification, drawing, and plan that a professional engineer or professional land surveyor prepared and that is filed with the commission shall contain the seal or stamp and signature of that professional engineer or land surveyor in accordance with KRS 322.340."¹

¹ Letter to Gerald E. Wuetcher, Counsel for Monroe District, and Jana Dubree, Monroe District, from Linda Faulkner, Filings Division Director, Public Service Commission (filed Feb. 26, 2016).

On March 1, 2016, Monroe District filed revised versions of four exhibits to its application. On March 3, 2016, Monroe District filed a Motion for Acceptance of Filing or, in the Alternative, for a Deviation (“Motion for Acceptance or Deviation”). In support of its motion for Acceptance or Deviation, Monroe District indicates that its application was “without certain permits” from the U.S. Army Corps of Engineers (“USACE”) and the Kentucky Department of Highways (“Highways Department”).²

Monroe District states that it has applied for the USACE permit and that the requested permit should be issued shortly.³ Monroe District states that KRS 177.106 requires Monroe District to obtain an encroachment permit from the Highways Department prior to any excavation of any state highway rights-of-way.⁴ Monroe District states that it must agree to indemnify the Highways Department and present evidence of such indemnification, consisting of a certificate of insurance and payment and performance bonds, in order to obtain an encroachment permit.⁵ To avoid the expense of obtaining its own insurance or performance bond, Monroe District plans to rely upon those of the selected project contractor.⁶ Monroe District states that it cannot, however, provide evidence of the insurance coverage or performance bond until it enters into a

² Motion for Acceptance or Deviation at 1.

³ *Id.* at 5.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

construction contact with the contractor.⁷ Monroe District does not want to assume the obligations of such a contract until it has obtained a CPCN for the proposed project.⁸

Monroe District states that, with regard to an application for a CPCN, 807 KAR 5:001, Section 15(2)(b), requires “only that an application for a certificate of public convenience and necessity contain the permits that that applicant has obtained to commence construction of the proposed facilities and identify any remaining permits that remain to be obtained and that Monroe District has complied with this requirement.”⁹ Monroe District states that KRS 278.020(1) does not require an applicant to obtain all permits necessary for the construction of the proposed facilities prior to applying for a CPCN.¹⁰ Monroe District states that the Commission has previously accepted applications for filings that lack permits without comment.¹¹

Monroe District requests, in the event that the Commission determines that its application requires the two aforementioned permits, a deviation from 807 KAR 5:001, Section 15(2)(b), and that its application be accepted for filing.¹² Monroe District states that delaying the acceptance of its application will impose an unnecessary hardship and expense and will likely result in the loss of favorable bids on the project.¹³ Monroe District states that it “will not commence construction without these permits and that the

⁷ *Id.* at 5 and 6.

⁸ *Id.* at 6.

⁹ *Id.* at 2.

¹⁰ *Id.* at 3.

¹¹ *Id.* at 4.

¹² *Id.* at 4.

¹³ *Id.* at 6.

permits will not materially alter the project as presented” in the application.¹⁴ Monroe District states that the Commission can condition a CPCN upon Monroe District’s obtaining the permits.¹⁵

The Commission finds that Monroe District’s March 1, 2016 filing cured the deficiencies related to 807 KAR 5:001, Section 4(13). Therefore, the only remaining deficiency with Monroe District’s application pertains to the USACE permit and the Highways Department permit. 807 KAR 5:001, Section 15(2)(b), requires that an application for a CPCN include the following:

Copies of franchises or permits, if any, from the proper public authority for the proposed construction or extension, if not previously filed with the commission.

807 KAR 5:001, Section 22, permits the Commission, for good cause shown, to allow a deviation from the rules contained in 807 KAR 5:001. We find that we have granted a deviation from the requirements of 807 KAR 5:001, Section 15(2)(b), upon a demonstration that the omission of the permits from an application would not impede the Commission’s investigation and review.¹⁶ We have also granted a deviation and allowed the application process to go forward while an applicant awaits a permit from the proper authorities when circumstances warranted an expeditious review by the Commission.¹⁷

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Case No. 2014-00258, *Application of Kentucky-American Water Company for a Certificate of Convenience and Necessity Authorizing the Construction of Richmond Road Station Filter Building Improvements* (Ky. PSC Aug. 25, 2014), Order at 2.

¹⁷ Case No. 2007-00168, *Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity for the Construction of Modifications to the Water Intake System at Cooper Power Station in Pulaski County, Kentucky* (Ky. PSC May 9, 2007), Order at 1 and 2.

Monroe District states that it has applied for the USACE permit and is awaiting its issuance. Monroe District states that it plans to apply for the Highways Department permit upon being granted a CPCN for the project, and that the decision to seek a CPCN prior to applying for the encroachment permit is a cost-savings measure. We find that Monroe District has explained the omission of these two permits from its application, and further that Monroe District demonstrates good cause for the omission. The Commission finds that the omission from Monroe District's application of the two permits will not impede the Commission's investigation and review of the application. We find that Monroe District should provide a copy of the USACE permit and the Highways Department permit within ten days of obtaining each permit or approval.

IT IS THEREFORE ORDERED that:

1. Monroe District's request for a deviation from 807 KAR 5:001, Section 15(2)(b), is granted.
2. Monroe District shall provide a copy of the USACE permit and the Highways Department permit within ten days of obtaining each permit or approval.
3. The permits and approvals required to be filed pursuant to ordering paragraph 2 shall be filed in the record of this case if it is still open; otherwise the permits and approvals shall be filed with this case number and shall be maintained in Monroe District's general correspondence file.
4. Monroe District's application is considered filed as of the date of this Order.

By the Commission

ENTERED
MAR 11 2016
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

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Acting Executive Director *for*

Case No. 2015-00315

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