

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF NORTHERN)	
KENTUCKY WATER DISTRICT FOR A)	
CERTIFICATE OF PUBLIC CONVENIENCE AND)	CASE NO.
NECESSITY TO CONSTRUCT THE FORT)	2021-00047
THOMAS TREATMENT PLANT BASIN)	
IMPROVEMENTS PHASE 2 AND FOR APPROVAL)	
OF FINANCING)	

ORDER

On July 5, 2022, Northern Kentucky Water District (Northern Kentucky District) filed a motion to amend the Commission’s April 6, 2021 Order granting a Certificate of Public Convenience and Necessity (CPCN) and approval of financing. Northern Kentucky District requested to amend the April 6, 2021 Order to: (1) correct the interest rate to reflect a per annum interest rate of 1.5 percent, plus a per annum loan servicing fee of 0.25 percent for the Kentucky Infrastructure Association (KIA) State Revolving Fund (SRF) Loan instead of a per annum interest rate of 1.75 percent, plus a per annum loan servicing fee of 0.25 percent; (2) correct the amount of the KIA SRF financing for this project to \$3,935,000; and (3) authorize Northern Kentucky District to execute an Assistance Agreement with KIA for \$8,000,000 but only use \$3,935,000 of the proceeds for this project.

BACKGROUND

Northern Kentucky District’s original application included a request for a CPCN and financing, with total financing of \$6,000,000 including a \$3,395,000 SRF loan from KIA

and \$2,065,000 Bond Anticipation Note (BAN).¹ The application provided an interest rate of 1.75 percent plus a per annum loan servicing fee of 0.25 percent for the KIA SRF loan.² Subsequent to the application, on March 25, 2021, Northern Kentucky District filed a KIA Conditional Commitment Letter that stated materially different financing terms for the KIA loan from the original application.³ That letter reflected a KIA loan principal balance of \$8,000,000, with an interest rate of 1.5 percent plus a per annum loan servicing fee of 0.25 percent.⁴ At no time did Northern Kentucky District file a motion to amend its application to reflect these amounts.

On April 6, 2021, a final Order was issued approving the CPCN and authorizing Northern Kentucky District to borrow \$3,395,000 from KIA, at an interest rate of 1.75 percent per annum and a loan servicing fee of .025 percent per annum, as reflected in Northern Kentucky District's application.

In its July 5, 2022 motion, Northern Kentucky District acknowledged that the application contained typographical errors and incorrectly requested a principal amount of \$3,395,000 instead of \$3,935,000.⁵ Northern Kentucky District requested that the Commission amend the April 6, 2021 Order to correct the amount authorized to a principal amount of \$3,935,000. Northern Kentucky District further requested to correct the amount of the full KIA loan to \$8,000,000 with an interest rate of 1.5 percent plus a per annum

¹ Northern Kentucky District's Application for Approval of Construction and Financing (filed Feb. 5, 2021) at unnumbered page 3.

² Northern Kentucky District's Application for Approval of Construction and Financing, Exhibit D.

³ KIA Commitment Letter (filed Mar. 25, 2021).

⁴ KIA Commitment Letter (filed Mar. 25, 2021).

⁵ Northern Kentucky District's Motion to Amend April 6, 2021 Order (filed July 5, 2022) at unnumbered page 2.

loan servicing fee of 0.25 percent and stated that only \$3,935,000 of those funds will be used for the CPCN that was approved in this case, and that the remainder is to be used for separate project that Northern Kentucky District will submit to the Commission for a CPCN at a later date.⁶

DISCUSSION

As provided by KRS 278.400, “after a determination has been made by the commission in any hearing, any party to the proceedings may, within twenty (20) days after the service of the order, apply for a hearing with respect to any of the matters determined.” The final Order granting Northern Kentucky District’s CPCN and financing was entered on April 6, 2021. Northern Kentucky District did not file a motion for rehearing within the required time pursuant to KRS 278.400, and did not file its motion to amend the April 6, 2021 Order until over a year had passed from the issuance of the final Order.

Commission regulation 807 KAR 5:001(5) provides “All requests for relief that are not required to be made in an application, petition, or written request shall be by motion.” Pursuant to KRS 278.300(2), an “Application for authority to issue or assume securities or evidences of indebtedness shall be made in such form as the commission prescribes.”

The time to request rehearing has passed and the requested relief made in Northern Kentucky District’s motion provides significantly different material terms to the financing information provided in the original application. The material change to the financing requests requires a robust investigation to ensure that the legal standards for approving evidences of indebtedness in KRS 278.300 are satisfied. The Commission

⁶ Northern Kentucky District’s Motion to Amend April 6, 2021 Order (filed July 5, 2022) at unnumbered pages 1-2.

finds that Northern Kentucky District's requested relief in its motion for approval of financing should be made via a new application to the Commission pursuant to KRS 278.300 because the request was made over one year after the final Order was entered and requests authorization for financing with materially different terms than approved in the Commission's April 6, 2021 Order.

Northern Kentucky District has not indicated that there is any change in the construction of improvements to the Ft. Thomas Treatment Plant, Phase 2 project (Project). The amendments sought in Northern Kentucky District's motion concern only the financing for the Project. Therefore, the CPCN granted in the Commission's April 6, 2021 Order remains valid and Northern Kentucky District is not required to re-file for approval of the CPCN.

The Commission notes that at no time prior to the issuance of the April 6, 2021 Order did Northern Kentucky District seek to amend its application to reflect the correct financing amount and interest rate. An applicant is in control of the information it provides in an application filed with the Commission. The applicant has the responsibility of exercising reasonable diligence in the preparation and presentation of their case, which includes providing accurate, reliable information for the Commission to weigh. Granting Northern Kentucky District's motion would completely undermine the finality of Commission orders and violate KRS 278.400, which is intended to provide finality to Commission proceedings.

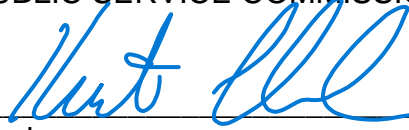
Should a new application be submitted by Northern Kentucky District, pursuant to statute, any such application will be placed at the head of the docket of the Commission and disposed of promptly.

IT IS HEREBY ORDERED:

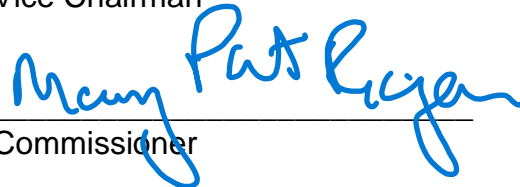
1. Northern Kentucky District's motion is denied.
2. Northern Kentucky District shall file a new application pursuant to KRS 278.300 for approval of financing in connection with the CPCN granted for the construction project specified in the Commission's April 6, 2021 Order. The CPCN granted in the Commission's April 6, 2021 Order remains valid and Northern Kentucky District is not required to re-file for approval of the CPCN.
3. This case is now closed and removed from the Commission's docket.

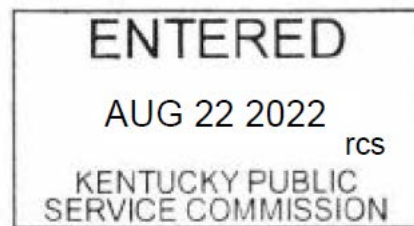
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PUBLIC SERVICE COMMISSION


Chairman

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Commissioner



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