

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BLUEGRASS)	
WATER UTILITY OPERATING COMPANY, LLC)	
FOR A CERTIFICATE OF PUBLIC CONVENIENCE)	
AND NECESSITY FOR THE INSTALLATION OF)	CASE NO.
MONITORING EQUIPMENT AND FOR A)	2022-00216
CORRESPONDING LIMITED WAIVER OF DAILY)	
INSPECTION REQUIREMENTS)	

ORDER

On August 8, 2022, Bluegrass Water Operating Company, LLC (Bluegrass Water) tendered an application pursuant to KRS 278.020 and 807 KAR 5:001, Section 15, seeking a Certificate of Public Convenience and Necessity (CPCN) to install remote monitoring equipment at several sewer treatment facilities. The application also sought approval for deviation from 807 KAR 5:071, Section 7(4), which requires daily inspection of sewage facilities. The application was deemed filed as of August 8, 2022. No intervention was requested in this proceeding. Bluegrass Water responded to five sets of requests for information from Commission Staff. Bluegrass Water requested that this case be submitted for a decision based on the existing record on November 15, 2022. This matter stands submitted for a decision based on the written record.

LEGAL STANDARD

No utility may construct or acquire any facility to be used in providing utility service to the public until it has obtained a CPCN from this Commission.¹ To obtain a CPCN, the

¹ KRS 278.020(1). Although the statute exempts certain types of projects from the requirement to obtain a CPCN, the exemptions are not applicable.

utility must demonstrate a need for such facilities and an absence of wasteful duplication.²

“Need” requires:

[A] showing of a substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed or operated.

[T]he inadequacy must be due either to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business; or to indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service.³

“Wasteful duplication” is defined as “an excess of capacity over need” and “an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties.”⁴ To demonstrate that a proposed facility does not result in wasteful duplication, the Commission has held that the applicant must demonstrate that a thorough review of all reasonable alternatives has been performed.⁵ Although cost is a factor, selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.⁶ All relevant factors must

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

³ *Kentucky Utilities Co.*, 252 S.W.2d at 890.

⁴ *Kentucky Utilities Co.*, 252 S.W.2d at 890.

⁵ Case No. 2005-00142, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky* (Ky. PSC Sept. 8, 2005), Order at 11.

⁶ See *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 390 S.W.2d 168, 175 (Ky. 1965). See also Case No. 2005-00089, *Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity for the Construction of a 138 kV Electric Transmission Line in Rowan County, Kentucky* (Ky. PSC Aug. 19, 2005), final Order.

be balanced.⁷

Regarding Bluegrass Water's deviation request, 807 KAR 5:071, Section 7(4), states, in relevant part, that:

Each sewage utility shall adopt procedures for inspection of its sewage treatment facilities to assure safe and adequate operation of its facilities and compliance with commission rules. . . . Unless otherwise authorized in writing by the commission, the sewage utility . . . shall make inspections of all mechanical equipment on a daily basis.

The Commission has previously indicated that inspection procedures that deviate from the daily inspection requirement in 807 KAR 5:071, Section 7(4), could be authorized if the alternative inspection procedures proposed would result in cost savings and would not affect the safe and adequate operations of the sewer facilities.⁸

BACKGROUND

Bluegrass Water is a sewer utility that since 2020 has acquired 22 sewer facilities across Kentucky. These are generally small facilities built by developers then transferred to homeowner's associations for operation and maintenance. Bluegrass Water filed a

⁷ Case No. 2005-00089, *East Kentucky Power Cooperative, Inc.* (Ky. PSC Aug. 19, 2005), final Order at 6.

⁸ See Case No. 2017-00201, *Garrison-Quincy-Ky-O-Heights Water District Request for a Deviation from the Daily Inspection of Sewer Grinding Pump Stations* (Ky. PSC Jan 22, 2018), Order (“[T]he Commission finds that an alternative inspection schedule, requiring annual inspection of grinder/pump stations that ensures that, “the commission's safety requirements are being met,” as required in 807 KAR 5:006, Section 26(8), is warranted.”); Case No. 2019-00069, *Notification to Sewer Utilities Regarding Deviation Requests Pursuant to 807 KAR 5:071 Section 7(4) Concerning the Inspection Schedule of Mechanical Grinder Pump Stations* (Ky. PSC May 7, 2019), Order (“The Commission finds that daily inspections of grinder pump stations as required by 807 KAR 5:071 Section 7(4) are impractical and would serve no purpose as the individual grinder pump stations are generally located on each individual customer's property and are enclosed in a sealed case.”); see also Case No. 2014-00277, *Springcrest Sewer Company, Inc Request for Deviation from 807 KAR 5:071, Section 7(4)* (Ky. PSC Dec. 16, 2014), Order (in which the Commission acknowledged that remote monitoring could “provide a level of assurance concerning the safe and adequate operation of the sewer facilities above that of a daily visual inspection” but denied the indefinite deviation in that case because a plan for remote monitoring had not been presented).

series of CPCN applications aimed at correction and prevention of exceedances of permitted effluent levels that had led to past violations at these facilities. Bluegrass Water previously installed remote monitoring equipment at nine of these sewer facilities in an attempt to better monitor effluent levels and functionality of equipment.⁹ The present application seeks approval for installation of remote monitoring equipment at the other 13 facilities in the following neighborhoods: Randview,¹⁰ Longview/Homestead, Timberland, River Bluffs, Center Ridge, Arcadia Pines, Carriage Park, Marshall Ridge, Delaplain, Herrington Haven, Woodland Acres, Darling, and Springcrest.¹¹

Bluegrass Water's stated purpose for installing remote monitoring equipment is that this system provides continuous, accurate, live data to operators, enabling the operator to monitor the facility and control costs. Bluegrass Water argued that the system would minimize exceedances by detecting problems immediately, resulting in faster repair or prevention of performance issues before they result in exceedances or malfunctions. Bluegrass Water also asserted that faster repair and fine-tuning via monitoring will increase the longevity of components.¹²

Bluegrass Water also seeks a deviation from daily inspection of mechanical components required by 807 KAR 5:071, Section 7(4), for facilities that already include

⁹ Application, Exhibit 24.

¹⁰ Bluegrass Water indicated that it no longer seeks a CPCN for equipment to have been installed at the Randview facility, since it was transferred in Case No. 2022-00218, *Electronic Joint Application of Bluegrass Water Utility Operating Company, LLC and the Electric Plant Board of Mayfield, Kentucky for Approval of Acquisition and Transfer of Ownership and Control of Wastewater Facilities Serving Randview Estates Subdivision in Graves County, Kentucky* (Ky. PSC May 5, 2023), Order. Bluegrass Water's Response to Commission Staff's Fifth Request for Information (Staff's Fifth Request) (filed May 26, 2023), Item 1.

¹¹ Application at 1.

¹² Application at 11.

remote monitoring as well as the facilities included in the present proposal. Bluegrass Water stated that when remote monitoring systems are installed, daily inspection would be unnecessary—that constant data reporting any problems makes in-person inspection partially obsolete.¹³ However, Bluegrass Water’s proposed plan is to continue in-person monitoring three days per week instead of seven as a way to ensure that all remote monitoring equipment is working properly and communicating all necessary information.¹⁴ Bluegrass Water calculated that it will save \$275,000 in annual operations and maintenance (O&M) expense by reducing in-person monitoring from seven to three days per week.¹⁵ This figure is based on reduction of fees paid under Bluegrass Water’s contracts with the operators who make these in-person visits. Bluegrass Water noted that it intends to amend its contracts with its operators to realize this reduction.¹⁶

Bluegrass Water considered purchasing remote monitoring equipment from the three principal manufacturers of this type of equipment: Omni, Mission, and High Tide.¹⁷ Bluegrass Water rejected Omni because it did not include the option to add satellite communications.¹⁸ The standard method of communication for each brand’s system is cellular technology. Both Mission and High Tide permit addition of satellite communication, which Bluegrass Water deemed necessary to communicate with the

¹³ Application at 15–16.

¹⁴ Application at 15.

¹⁵ Application at 16.

¹⁶ Bluegrass Water’s Response to Commission Staff’s Fourth Request for Information (Staff’s Fourth Request) (filed Feb. 8, 2023), Item 5(b).

¹⁷ Application at 13.

¹⁸ Application at 13.

most remote, rural facilities.¹⁹ Commission Staff requested that Bluegrass Water provide data regarding cellular communications interruptions for the facilities that already have remote monitoring installed to determine the necessity of satellite communications.

When Bluegrass Water responded to data requests seeking information about the frequency of cellular communications disruptions at facilities where remote monitoring systems had already been installed, Bluegrass Water included data from facilities that were the subject of the present CPCN application.²⁰ When asked whether the remote monitoring equipment had already been installed at these facilities, Bluegrass Water admitted that it had already installed the equipment at every facility except Randview, which had been transferred.²¹ Bluegrass Water further stated:

The Company appreciates the magnitude of its error. It apologizes that it did not realize the factual errors in its prior filings in this matter until now. Moreover, the Company acknowledges that the Commission has previously cautioned it that “by failing to obtain a CPCN, a utility risks a finding by the Commission barring recovery of the investment.” See *In the Matter of Bluegrass Water Utility Operating Company, LLC for an Adjustment of Rates and Approval of Construction*, Case No. 2020-00290, Order at 28 (Aug. 2, 2021).

In light of this, the Company will need to make a thorough and detailed revision of its Application Exhibit 24 (Cost_of_Installation_-.xlsx) and supplement some of its prior data request responses. The Company has begun the process of compiling and analyzing the cost data associated with the remote monitoring equipment, which should provide an actual (as opposed to estimated) basis to evaluate costs against estimated savings from the requested partial waiver

¹⁹ Application at 13.

²⁰ Bluegrass Water’s Response to Staff’s Fourth Request, Item 1(b).

²¹ Bluegrass Water’s Response to Staff’s Fifth Request, Item 1(a).

of daily inspection requirements (and other savings from switching to High Tide).²²

Bluegrass Water noted it had no objection to suspending the review of the CPCN request pending submission of updated cost data but reiterated its request for a deviation from 807 KAR 5:071, Section 7(4) daily in-person inspection requirements.

DISCUSSION AND FINDINGS

Having considered the application and all evidence in the record, the Commission finds that the CPCN should be denied and the deviation from 807 KAR 5:071, Section 7(4) should be granted.

Under KRS 278.020(1):

No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010 . . . until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.

The Commission has previously determined that this statutory provision means that “[t]he Commission will not issue a CPCN for construction that has been completed prior to a request for a CPCN. Therefore, the Commission finds that the CPCN application should be denied, because the remote monitoring equipment has already been installed. The Commission declines to suspend review of this application. The filing of additional cost documentation would not change the fact that the equipment has already been installed and is therefore not eligible for a CPCN.

²² Bluegrass Water’s Response to Staff’s Fifth Request, Item 1(a).

The construction of facilities without first obtaining a CPCN can result in exclusion of the cost of that facility from rate base consideration.”²³ The failure in this case is also more egregious, because the Commission explicitly indicated in Bluegrass Water’s last rate case that the implementation of a remote monitoring system would require a CPCN,²⁴ despite Bluegrass Water’s contention that these installations constituted extensions in the ordinary course of business exempting this equipment from the CPCN requirements under KRS 278.020(1)(a)(2). However, the Commission notes that Bluegrass Water currently has a pending rate case in which the cost recovery for remote monitoring is at issue.²⁵ Thus, the Commission finds that any decision regarding the recovery of costs for remote monitoring should be addressed in that case.

The denial of Bluegrass Water’s CPCN does not change the analysis of the request for deviation from 807 KAR 5:071, Section 7(4), daily in-person inspection requirements. As the Commission noted in Bluegrass Water’s most recent rate case, “remote monitoring systems, at least in part, serve the same purpose as [the daily inspection] requirement by ensuring that a utility is constantly monitoring the performance of equipment to prevent failures and ensure adequate service.”²⁶ Since all the facilities now have remote monitoring equipment installed, daily in-person inspection is unnecessary and duplicative. Implementation of real-time monitoring and detection of

²³ Case No. 2003-00495, *Application of Classic Construction, Inc. for Approval of Transfer of Ownership of Coolbrook Sewage Treatment Plant in Franklin County, Kentucky from Aquasource Utility, Inc.* (Ky. PSC May 10, 2004), Order at 4.

²⁴ Case No. 2020-00290, *Electronic Application of Bluegrass Water Utility Operating Company, LLC for an Adjustment of Rates and Approval of Construction* (Ky. PSC Aug. 2, 2021), Order at 25.

²⁵ See Case No. 2022-00432, *Electronic Application of Bluegrass Water Utility Operating Company, LLC for an Adjustment of Sewage Rates* (filed Feb. 27, 2023), Application, Exhibit 10.

²⁶ Case No. 2020-00290, Aug. 2, 2021 Order at 35.

malfunctions means that in-person inspections, which would otherwise be the method for detecting malfunctions, are only necessary to periodically ensure that the remote monitoring systems are working properly. Maintaining in-person inspections three days per week, instead of the required seven days per week, is sufficient to ensure the remote monitoring systems are functional.

Bluegrass Water expects a \$275,000 reduction in annual O&M expense as a result of reducing in-person inspections from seven to three days per week. Assuming that the deviation results in O&M savings, reducing inspections to three days per week will benefit customers by reducing Bluegrass Water's revenue requirement without a significant impact on service, as the remote monitoring system should meet or exceed the usefulness of the omitted inspection days.

IT IS THEREFORE ORDERED that:

1. Bluegrass Water's application for a CPCN to install remote monitoring equipment at its sewer treatment facilities is denied.
2. Bluegrass Water's request for a deviation from daily in-person inspection requirements in 807 KAR 5:071, Section 7(4), is granted, subject to the condition that Bluegrass Water continue to conduct in-person inspections three days per week.
3. This case is closed and removed from the Commission's docket.

PUBLIC SERVICE COMMISSION



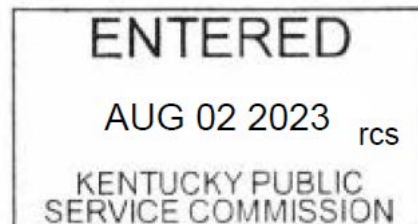
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