

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF THE HARRISON)	
COUNTY WATER ASSOCIATION, INC. REQUEST)	
FOR A CERTIFICATE OF PUBLIC CONVENIENCE)	
AND NECESSITY, PURSUANT TO KRS 278.020,)	CASE NO.
OR ALTERNATIVELY A DECLARATORY ORDER)	2023-00006
ESTABLISHING THAT A CERTIFICATE OF)	
PUBLIC NEED AND CONVENIENCE IS NOT)	
NECESSARY, PURSUANT TO KRS 278.020 AND)	
807 KAR 5:001 (15 AND/OR 19))	

ORDER

On January 6, 2023, Harrison County Water Association (Harrison Water) filed an application pursuant to KRS 270.020 and 807 KAR 5:001E, Section 15, seeking a Certificate of Public Convenience and Necessity (CPCN), or in the alternative, a declaratory order finding that a CPCN was not necessary to move a water line upon request of the Kentucky Transportation Cabinet (Cabinet).

LEGAL STANDARD

KRS 278.020(1)(a) requires utilities to obtain a CPCN prior to starting construction if any plant, equipment, property, or facility for public service. However, there are two relevant exceptions to this requirement. KRS 278.020(1)(a)(2) exempts “[o]rdinary extensions of existing systems in the usual course of business,” which are further described in 807 KAR 5:001E, Section 15(3):

A certificate of public convenience and necessity shall not 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 or contiguous area in which the utility renders service, 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.

“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.”¹ 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.² Although cost is a factor, selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.³ All relevant factors must be balanced.⁴

KRS 278.020(1)(a)(3) also provides the following exemption:

A water district created under KRS Chapter 74 or a water association formed under KRS Chapter 273 that undertakes a waterline extension or improvement project 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 commission according to KRS 278.220 and: a. The water line extension or improvement project will not cost more than five hundred thousand dollars (\$500,000); or b. The water district or water association will not, as a result of the water line

¹ *Kentucky Utilities Co. v. Public Service Com'n*, 252 S.W.2d 885 (Ky. 1952)

² 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.

³ 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.

⁴ Case No. 2005-00089, Aug. 19, 2005 final Order at 6.

extension or improvement project, incur obligations requiring commission approval as required by 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; until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.

Pursuant to 807 KAR 5.001E, Section 19, the Commission may, upon application by a person substantially affected, issue a declaratory order with respect to the jurisdiction of the Commission, the applicability to a person, property, or state of facts of an order or administrative regulation of the commission or provision of KRS Chapter 278, or with respect to the meaning and scope of an Order or administrative regulation of the Commission or provision of KRS Chapter 278. Here, Harrison Water seeks an Order with respect to the requirements of KRS 278.020 and the exceptions to the general rule that a CPCN must be obtained prior to a utility beginning construction of utility plant.

BACKGROUND

Pursuant to KRS 175B.050(5)(b), the Cabinet has the authority to require a utility to move its facilities subject to the requirements of the Public Service Commission. The Cabinet requested that Harrison Water relocate approximately 940 feet of water main along KY 353, near the intersection of US 460 in Bourbon County, Kentucky, due to expansion of US 460 and KY 353.⁵ This main connects Harrison Water to its water supply from Kentucky-American Water.⁶ The Cabinet agreed to reimburse Harrison Water for the “actual cost” of the relocation work, subject to conditions, including constructing the

⁵ Application at 2, paragraph A. Although this is characterized as a relocation, the project actually involves building a new main and abandoning the existing main, which is more cost-effective than excavating the existing main and moving it.

⁶ Application at 3, paragraph G.

most economical facilities that meet service requirements and submitting necessary change orders.⁷ The Cabinet also required Harrison Water to follow detailed construction plans.⁸ The Cabinet estimated the total cost of the relocation project at \$254,182.01.⁹ Upon advertising for bids, Harrison Water received one bid for the work, from Floyd Excavating, LLC, in the amount of \$165,232.23.¹⁰ Harrison Water has retained an engineering firm at an estimated cost of \$50,797.01, for an estimated total of \$216,029.24 for the entire project.¹¹ Harrison Water stated that it does not intend to exceed the scope of the relocation project beyond the scope of the reimbursable costs set forth in the Agreement.¹²

DISCUSSION AND FINDINGS

The elements that must be fulfilled for this project to be considered an extension in the ordinary course of business are (1) an extension that (2) does not create wasteful duplication of plant, equipment, property, or facilities, (3) does not conflict with existing certificates or service of other utilities, and (4) does 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.

⁷ Supplemental Filing (filed Jan. 30, 2023), Exhibit 1, Utility Relocation Keep Cost Agreement Pursuant to KRS 177.035 (Agreement), pages 4–7.

⁸ Agreement at 25–34.

⁹ Agreement at 3. The Cabinet's estimate included a 10% contingency. See Agreement at 22.

¹⁰ Supplemental Filing (filed Jan. 30, 2023), Exhibit 2, Affidavit Regarding Bids Received for The KY 353 Relocate Project and Intent to not Exceed Scope of Project as to Exceed Reimbursable Expenses and/or Costs (Affidavit), page 1, paragraph 1.

¹¹ Affidavit at 1, paragraph 2.

¹² Affidavit at 1, paragraph 3.

Neither KRS Chapter 278 nor 807 KAR 5:001E define “extension.” However, the common definition of the word includes the very broad “property whereby something occupies space.”¹³ The fact that the relocation actually involves building a new water main also fits within the less inclusive “an enlargement in scope or operation” definition.¹⁴ The proposed project meets the lack of wasteful duplication requirement because the Agreement includes detailed construction plans that mandate how Harrison Water must perform the work,¹⁵ preventing selection of alternative designs, materials, or methods of connecting to the Kentucky-American Water supply. The project does not conflict with any other nearby utility’s facilities. Lastly, since the Cabinet has agreed to fully reimburse the actual costs of the proposed project, it does not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved and will not result in increased charges to customers if Harrison Water complies with the terms of the Agreement. Therefore, the proposed project does not require a CPCN as an extension in the ordinary course of business.

Harrison Water is also exempted from obtaining a CPCN for the proposed project under KRS 278.020(1)(a)(2). This exemption requires the utility to (1) be a water district or association and Class A or B utility, (2) undertake a waterline extension or improvement project costing under \$500,000 or incur debt requiring Commission approval under KRS 278.300, and (3) not impose a rate increase.

¹³ Extension, definition 4, *Merriam-Webster*, <https://www.merriam-webster.com/dictionary/extension> (last accessed Jan. 31, 2023).

¹⁴ Extension, definition 1(a), *Merriam-Webster*, <https://www.merriam-webster.com/dictionary/extension> (last accessed Jan. 31, 2023).

¹⁵ Agreement at 25–34.

Harrison Water is a water association and Class A utility.¹⁶ As discussed above, this project constitutes an extension, will cost under \$500,000, and will not result in a rate increase. Therefore, the proposed project also does not require a CPCN as exempt under KRS 278.020(1)(a)(3).

Having considered the application and all evidence in the record and for the reasons stated above, the Commission finds that Harrison Water's request for a declaratory order stating that it is exempt from obtaining a CPCN for the work described in the Agreement should be granted.

IT IS THEREFORE ORDERED that:

1. Harrison Water's request for a declaratory order exempting it from obtaining a CPCN for the proposed project described in its application is granted.
2. Harrison Water's request for a CPCN for the proposed project described in its application is dismissed as moot.
3. If the Cabinet does not reimburse any costs incurred in constructing the proposed project, Harrison Water shall file in the post-case correspondence file for this proceeding an itemization of and reason for all unreimbursed costs.
4. This case is closed and removed from the Commission's docket.

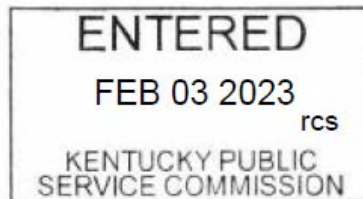
¹⁶ Application at 2, paragraph B.

PUBLIC SERVICE COMMISSION


Chairman

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ATTEST:


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