

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF THE NICHOLAS)	
COUNTY WATER DISTRICT FOR A)	
CERTIFICATE OF PUBLIC CONVENIENCE AND)	
NECESSITY TO CONSTRUCT A SYSTEM)	CASE NO.
IMPROVEMENTS PROJECT AND AN ORDER)	2023-00024
APPROVING A CHANGE IN RATES AND)	
AUTHORIZING THE ISSUANCE OF SECURITIES)	
PURSUANT TO 278.023)	

ORDER

On February 10, 2023, Nicholas County Water District (Nicholas District) tendered an application, pursuant to KRS 278.023. Nicholas District requested (1) a Certificate of Public Convenience and Necessity (CPCN) to replace approximately 7,000 linear feet of Polyvinyl chloride (PVC) water main with new ductile iron pipe and appurtenances, an existing booster pump, and 1,600 meters with new radio read meters and pertinent software; (2) authorization to issue securities to finance, in part, the proposed project pursuant to an agreement with the United States Department of Agriculture, Rural Development (RD); and (3) approval of proposed rate changes required by said agreement. No party has sought intervention in this matter. This matter now stands submitted for a decision by the Commission.

LEGAL STANDARD

Nicholas District has submitted its application pursuant to KRS 278.023. The Commission is required, pursuant to KRS 278.023, to accept agreements between water districts and Rural Development (RD) regarding construction projects, and to issue the

necessary orders to implement the terms of such agreements no later than 30 days after filing the application with the Commission. KRS 278.023 does not grant the Commission any discretionary authority to modify or reject any portion of the agreement between RD and Nicholas District or defer the issuance of all necessary orders to implement the terms of that agreement.

Pursuant to KRS 278.023, the statute further denies the Commission any authority to reject an application when the evidence of record indicates that a water utility's proposed construction will result in the wasteful duplication of facilities, resulting in an excessive investment, or its proposed rates are unfair, unjust, or unreasonable. As explained in KRS 278.023(1), the limits on the Commission's review are because federal financing of these projects entails prior review and oversight by a federal agency and obligates the utility to take certain actions; conflicting requirements between the federal agency and the Commission may jeopardize the project and place the utility in an untenable position.

The Commission, therefore, is not able to review this application using the same standards that are used for applications that are not filed pursuant to KRS 278.023. The legal standard established in KRS 278.023 requires that (1) the applicant be a water utility formed under KRS Chapter 74 or 273; and (2) the construction project must be funded in whole or in part under terms of an agreement between the water utility, United States Department of Agriculture or United States Department of Housing and Urban Development. The Commission is not, however, prohibited by KRS 278.023 from requiring a utility seeking approval of such an agreement to subsequently file reports or

other information in order to monitor the utility's ability to repay the loan, meet other financial or regulatory obligations, or otherwise establish its financial condition.

BACKGROUND

Nicholas District is a water district organized under KRS Chapter 74. It proposed a single project consisting of two contracts. The first contract is for the replacement of approximately 7,000 LF of PVC water main with ductile iron pipe and appurtenances, and the replacement of a booster pump station.¹ The second contract is for the replacement of 1600 meters with new radio read meters with pertinent software.²

Nicholas District proposed to fund the proposed project through the issuance of \$1,221,000 of its Waterworks Revenue bonds (which RD has committed to purchase in full) maturing on a 40 year term with an interest rate not to exceed 1.75% per annum, a RD grant in the amount of \$204,000, and an Appalachian Regional Commission grant of \$500,000.³

As a condition of receiving the loan and grant from RD, Nicholas District is required to meet RD's minimum rate levels as set forth in Section 33 of the RD Letter of Conditions.⁴ The RD Letter of Conditions included a minimum charge for various rates in Nicholas District's tariff that were higher than Nicholas District's current rates. However, Nicholas District's wholesale rate for Harrison County Water Association is currently higher than the rate required by RD for such wholesale service and Phase 2 of Nicholas

¹ Application, Exhibit A.

² Application, Exhibit A.

³ Application at 1–2.

⁴ Application, Exhibit 2, RD Letter of Conditions, at 12–13.

District's wholesale rate, which was approved in Case No. 2021-00455 for an effective date of August 12, 2023, is higher than the current wholesale rate.⁵ Thus, Nicholas District proposed to increase all of its rates consistent with the RD Letter of Conditions but proposed no change to its wholesale rate for Harrison County Water Association.⁶

DISCUSSION AND FINDINGS

Having considered the application and all evidence in the record, the Commission finds that the application should be approved pursuant to KRS 278.023. This is because Nicholas District is a water district organized under KRS Chapter 74 and the approvals sought are authorized or required by the RD agreement, which satisfies that legal standard established in KRS 278.023.

However, the Commission notes that Nicholas District filed an alternative rate adjustment pursuant to 807 KAR 5:076 in Case No. 2021-00455.⁷ The final Order in Case No. 2021-00455 approved a two-phase rate increase, with Phase 1 implemented on or after August 12, 2022, and Phase 2 approved with an effective date of August 12, 2023.⁸ With the exception of the wholesale rate for Harrison County Water Association, the Commission notes that the water rates required by RD in this case are higher than the

⁵ See Case No. 2021-00455, *Electronic Application of Nicholas County Water District for a Rate Adjustment Pursuant to 807 KAR 5:076* (Ky. PSC Aug. 12, 2022), ordering paragraphs 3–4, Appendix B (discussing the current approved rates); Application, Exhibit 2, RD Letter of Conditions, at 12–13 (showing the rates required by RD); Application, Exhibit E, Notice of Proposed Rate Change (showing the rates proposed by Nicholas District).

⁶ See Application, Exhibit E, Notice of Proposed Rate Change (showing all of the proposed rate increases but showing that no change was proposed for the wholesale rate for the Harrison County Water Association).

⁷ See Case No. 2021-00455, *Electronic Application of Nicholas County Water District for a Rate Adjustment Pursuant to 807 KAR 5:076* (Ky. PSC Aug. 12, 2022).

⁸ Case No. 2021-00455, *Electronic Application of Nicholas County Water District for a Rate Adjustment Pursuant to 807 KAR 5:076* (Ky. PSC Aug. 12, 2022), ordering paragraphs 3–4.

Phase 2 rates approved in Case No. 2021-00455.⁹ Therefore, the Phase 2 rate increase approved in that case is no longer necessary and the rates approved herein shall supersede the Phase 2 rates in that case, except for the Phase 2 wholesale rate for Harrison County Water Association, which is unaffected by this Order and shall become effective on August 12, 2023, as approved in Case No. 2021-00455.

Further, despite Nicholas District's recent alternative rate filing in Case No. 2021-00455 and its rate increase in this matter, the Commission is still concerned about Nicholas District's financial condition. Based on the Commission's limited review of Nicholas District's financial information filed with the Commission, it appears that Case No. 2021-00455 is the only general rate base adjustment case filed by Nicholas District before the Commission. Nicholas District has instead relied on rate increases through purchase water adjustments, which pass through increases in purchased wholesale water rates, and on KRS 278.023 cases like this case in which rates are typically established to meet RD's cash needs requirements.¹⁰

Nicholas District also failed to file a completed 2021 Annual Report in accordance with 807 KAR 5:006, Section 4(2). The Commission granted Nicholas District an extension to file the Annual Report on April 15, 2022. However, the Annual Report was not filed until August 16, 2022, and then still had a substantial number of blank fields. Since then, requests for status on providing all information required under 807 KAR 5:006,

⁹ Case No. 2021-00455, *Electronic Application of Nicholas County Water District for a Rate Adjustment Pursuant to 807 KAR 5:076* (Ky. PSC Aug. 12, 2022), Appendix B at 2–3.

¹⁰ See Case No. 2012-00537, *Alternative Rate Filing for Bath County Water District* (Ky. PSC Feb. 15, 2013), Order (noting that rates calculated using the cash needs method would satisfy RD's debt service requirements but that the debt service coverage method used by the Commission would produce higher rates because it allows a utility to recover depreciation expense and debt service coverage).

Section 4(2) were sent on September 28, 2022, October 25, 2022, and January 25, 2023. To date, Nicholas District has not filed the necessary information to complete the 2021 Annual Report. Nicholas District has similarly not filed its 2021 Audit Report or a statement that no audit was performed pursuant to 807 KAR 5:006, Section 4(3).

As a result, the Commission lacks current data to determine the feasibility of the rates proposed to meet Nicholas District's existing debt service agreements and revenue requirement or to review the state of its water loss. Nicholas District's prior reported two years of water loss were provided as 29.40 percent in 2019¹¹ and 24.25 percent in 2020.¹² In its prior Annual Reports on file with the Commission, Nicholas District reported a loss cost of \$255,294.00 in 2019 and \$219,730.00 in 2020.¹³ Commission records also indicate that only one of the Commissioners of Nicholas District has participated in any annual Water Commissioner training.

For the reasons discussed above, the Commission, on its own motion, finds that Nicholas District should file an application for a general rate adjustment pursuant to 807 KAR 5:001, Section 16, an application for an alternative rate adjustment pursuant to 807 KAR 5:076, or a formal motion with a detailed analysis of its rates and revenues and a statement explaining the reasons why no rate modifications are necessary on or before

¹¹ *Annual Report of Nicholas County Water District to the Public Service Commission for the Year Ending December 31, 2019* (2019 Annual Report) at 57.

¹² *Annual Report of Nicholas County Water District to the Public Service Commission for the Year Ending December 31, 2020* (2020 Annual Report) at 57.

¹³ *Annual Report of Nicholas County Water District to the Public Service Commission for the Year Ending December 31, 2020* (2020 Annual Report) at 21.

September 24, 2025.¹⁴ The Commission further finds that any such application or motion should be based upon 2024 data and Nicholas District's 2024 Annual Report. The Commission also finds that Nicholas District should file a complete 2021 Annual Report and make any necessary filing pursuant to 807 KAR 5:006, Section 4(3) within 60 days after service of this Order.

IT IS THEREFORE ORDERED that:

1. Nicholas District is granted a CPCN for the proposed project as submitted.
2. Nicholas District's proposed plan of financing is approved.
3. Nicholas District is authorized to execute the RD loan as provided.
4. The rates proposed by Nicholas District and set forth in the Appendix to this Order are approved for service rendered on and after March 12, 2023.
5. Nicholas District shall file a revised tariff sheet adopting the rates set forth in the Appendix attached hereto within 30 days of issuance of this Order.
6. Nothing herein shall be construed as affecting the Phase 2 rate for wholesale service to Harrison County Water Association approved in Case No. 2021-00455.
7. The proceeds of the loan shall be used only for the purposes specified in Nicholas District's application.
8. Nicholas District shall obtain approval from the Commission prior to performing any additional construction not expressly authorized by this Order.

¹⁴ Three years after the final Order in Case No. 2021-00455. Case No. 2021-00455, *Electronic Application of Nicholas County Water District for a Rate Adjustment Pursuant to 807 KAR 5:076* (Ky. PSC Aug. 12, 2022), final Order.

9. Nicholas District shall file with the Commission documentation of the total costs of this project, including the cost of construction and all other capitalized costs (e.g., engineering, legal, and administrative), within 60 days of the date that construction is substantially completed. Construction costs shall be classified into appropriate plant accounts in accordance with the Uniform System of Accounts for water utilities prescribed by the Commission.

10. Nicholas District shall file a copy of the as-built drawings and a certified statement from the engineer that the construction has been satisfactorily completed in accordance with the contract plans and specifications within 60 days of substantial completion of the construction certified herein.

11. Nicholas District shall require the construction to be inspected under the general supervision of a professional engineer with a Kentucky registration in civil or mechanical engineering to ensure that the construction work is done in accordance with the contract drawings and specifications and in conformance with the best practices of the construction trades involved in the project.

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

13. Any documents filed by Nicholas District in the future pursuant to this Order shall reference this case number and shall be retained in the post-case correspondence file for this proceeding.

14. Nicholas District shall file a completed 2021 Annual Report within 60 days service of this Order.

15. Nicholas District shall make any necessary filing pursuant to 807 KAR 5:006, Section 4(3) within 60 days service of this Order.

16. On or before September 24, 2025, Nicholas District shall file an application for a general rate adjustment pursuant to 807 KAR 5:001, Section 16, or an application for an alternative rate adjustment pursuant to 807 KAR 5:076, or a formal motion with a detailed analysis of its rates and revenues and a statement explaining the reasons why no rate modifications are necessary under this case number.

17. The rate adjustment or detailed motion filed by Nicholas District on or before September 24, 2025, shall be based upon 2024 financial data and Nicholas District's 2024 Annual Report.

18. The Executive Director is delegated authority to grant reasonable extensions of time for filing of any documents required by this Order upon Nicholas District's showing of good cause for such extension.

19. The Commission's approval of the CPCN and rates is conditioned upon execution of all required loan documents.

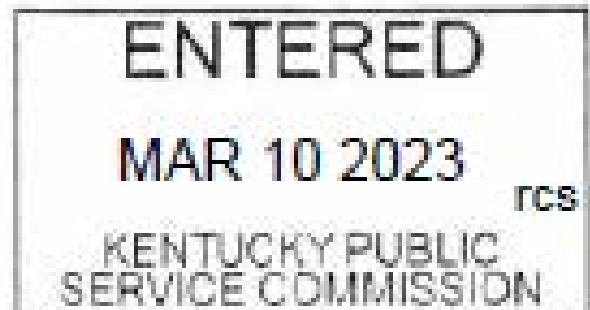
20. This case is closed and is removed from the Commission's docket.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner



ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2023-00024 DATED MAR 10 2023

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

Monthly Rates

5/8 X 3/4-Inch Meter

First	1,000 Gallons	\$21.93	Minimum Bill
Next	2,000 Gallons	0.01043	Per Gallon
Next	2,000 Gallons	0.00855	Per Gallon
Next	5,000 Gallons	0.00683	Per Gallon
Next	15,000 Gallons	0.00615	Per Gallon
Over	25,000 Gallons	0.00581	Per Gallon

1-Inch Meter

First	3,000 Gallons	\$42.78	Minimum Bill
Next	2,000 Gallons	0.00855	Per Gallon
Next	5,000 Gallons	0.00683	Per Gallon
Next	15,000 Gallons	0.00615	Per Gallon
Over	25,000 Gallons	0.00581	Per Gallon

1 1/2-Inch Meter

First	5,000 Gallons	\$59.88	Minimum Bill
Next	5,000 Gallons	0.00683	Per Gallon
Next	15,000 Gallons	0.00615	Per Gallon
Over	25,000 Gallons	0.00581	Per Gallon

2-Inch Meter

First	10,000 Gallons	\$94.01	Minimum Bill
Next	15,000 Gallons	0.00615	Per Gallon
Over	25,000 Gallons	0.00581	Per Gallon

3-Inch Meter

First	15,000 Gallons	\$124.76	Minimum Bill
Next	10,000 Gallons	0.00615	Per Gallon
Over	25,000 Gallons	0.00581	Per Gallon

4-Inch Meter

First	25,000 Gallons	\$186.26	Minimum Bill
Over	25,000 Gallons	0.00581	Per Gallon

Wholesale Rates

Harrison County Water Association		0.00379	Per Gallon
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