

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF MONTGOMERY)	
COUNTY WATER DISTRICT #1 FOR A)	
CERTIFICATE OF PUBLIC CONVENIENCE AND)	CASE NO.
NECESSITY TO ACQUIRE AND INSTALL WATER)	2023-00098
SYSTEM IMPROVEMENTS AND AN ORDER)	
APPROVING A CHANGE IN RATES AND)	
AUTHORIZING THE ISSUANCE OF SECURITIES)	
PURSUANT TO 278.023)	

ORDER

This matter arises upon Montgomery County Water District #1's (Montgomery District #1) motion to deviate from filing requirements for its application tendered, pursuant to KRS 278.023, seeking a Certificate of Public Convenience and Necessity (CPCN), increased rates, and authorization to issue securities regarding equipment to improve Montgomery District #1's proposed project. In the application, Montgomery District #1 requested deviations from 807 KAR 5:069, Sections 2(4)–(6)(a)(1), 6(c), and Section 5, filing requirements. This matter now stands submitted for a decision by the Commission.

LEGAL STANDARD

The Commission is required, pursuant to KRS 278.023, to accept agreements between water utilities and the United States Department of Agriculture 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 discretion

authority to modify or reject any portion of the agreement between the RD and Montgomery District #1 or defer the issuance of all necessary orders to implement the terms of that agreement.

KRS 278.023 does not grant the Commission the 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 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, USDA or United States HUD.

Regarding deviations from the filing requirements in 807 KAR 5:069, the pertinent subsections of 807 KAR 5:069 require the following documents to be filed:

- 807 KAR 5:069, Section 2(4): A copy of the preliminary and final engineering reports and bid tabulations.
- 807 KAR 5:069, Section 2(5): One copy of each set of plans and specifications on electronic storage medium in portable document format.

- 807 KAR 5:069, Section 2(6)(a)(1): A certified statement from an authorized water utility official confirming that the proposed plans and specifications for the construction project have been designed to meet the minimum construction and operating requirements established, for construction projects for facilities to treat or distribute water, in 807 KAR 5:066, Section 4(3) and (4), Section 5(1), Sections 6 and 7, Section 8(1) through (3), Section 9(1), and Section 10.
- 807 KAR 5:069, Section 2(6)(c): That the proposed rates, if any, shall produce the total revenue requirements recommended in the engineering reports.
- 807 KAR 5:069, Section 5: System Maps and Records. Within thirty days after completion of construction authorized under this administrative regulation, the utility shall revise its system maps and records maintained pursuant to 807 KAR 5:006, Section 23, to include all required information regarding the new construction.

Commission regulation 807 KAR 5:069, Section 2(8), provides that an applicant should file a motion requesting a deviation from 807 KAR 5:069, Section 6(a), if the minimum construction standard cannot be met.

KRS 278.020 is the controlling statute when a utility applies for a CPCN. However, KRS 278,020(1)(a)(3) creates an exception for water district that controls the requirements when a CPCN is needed. The statute creates a two-prong test to determine whether a CPCN is required. It requires that the (1) water district created under KRS Chapter 74 undertakes a waterline extension or improvement project if the water district is a Class A or B utility and (2) the waterline extension or improvement project will not cost more than \$500,000.

Finally, 807 KAR 5:001E, Section 15(3), creates an exception for CPCN extensions in the ordinary course of business. The regulation also creates a two-prong test to determine the applicability of the exception to the requirement to obtain a CPCN. Under 807 KAR 5:001E, Section 15(3), a CPCN is not required for projects that (1) do not create wasteful duplication of plant, equipment, property, or facilities, or conflict with the existing certificates of service of other utilities operating in the same area; and (2) do not involve sufficient capital outlay to materially affect the existing financial conditions of the utility involved, or will not result in increased charges to its customers.

PROPOSED PROJECT

Montgomery District #1, a water district organized under KRS Chapter 74, requested a CPCN to acquire and install equipment to improve its existing water system. The proposed project involves the purchase of 735 radio read meters, a new utility truck, dump trailer, eight new fire hydrants; and maintenance on existing fire hydrants in the distribution system.¹ Montgomery District #1 stated it was advised by RD that an engineer would not be required for the proposed project because no physical construction will occur.²

Montgomery District #1 stated that the total cost of the proposed project is \$300,000. Montgomery District #1 further stated that the proposed project will be financed through the issuance of waterworks revenue bonds in the amount of \$225,000,

¹ Application, Exhibit A.

² Application, Exhibit A.

maturing over 40 years with an interest rate not to exceed 2.25 percent per annum, and an RD grant in the amount of \$75,000.³

As part of the agreement with RD, Montgomery District #1 is required to charge minimum rates.⁴ Montgomery District #1's current rates do not meet the minimum rates required by RD and is therefore seeking an increase in rates. Under the proposed rates, the average monthly bill of a residential or commercial water customer who uses 5,000 gallons month will increase from \$48.09 to \$52.14, an increase of \$4.05 or 8.4 percent.

DISCUSSION AND FINDINGS

Because Montgomery District #1 requested to deviate from filing requirements regarding a CPCN, the application cannot be accepted for filing until the Commission addresses the motion. As noted above, Montgomery District #1 requested to deviate from 807 KAR 5:069, Section 2(4), (5), (6)(a)(1), (6)(c), and Section 5.⁵ As a basis for its motion, Montgomery District #1 argued that the proposed project involved only the acquisition and installation of equipment. Montgomery District #1 further argued that the referenced regulatory filing requirements applied to construction and not the acquisition of facilities, and thus the cited regulations were inapplicable to the proposed project.

Based upon a review of the motion and the case record, and being otherwise sufficiently advised, the Commission finds that Montgomery District #1 should be granted a deviation for 807 KAR 5:069, Section 2(6)(a)(1), because this regulation applies to

³ Application at 2.

⁴ Application, Exhibit B.

⁵ Application at 3.

construction of facilities and no construction is taking place as part of the proposed project.

The Commission concludes that it cannot grant a deviation from KAR 5:069, Section 2(4), (5), (6)(c), and Section 5. This is because the Commission may grant a deviation from administrative regulations only when there is a regulatory provision allowing for such deviation. Here, Commission regulation 807 KAR 5:069 provides for a deviation from only 807 KAR 5:069, Section 2(6)(a). Because the Commission does not have the authority to grant a deviation from these regulations, the Commission finds that the deviation of these sections should be denied.

However, given the language of KRS 278.023, the Commission will continue its review of whether the application meets the necessary filing requirements. As noted above, KRS 278.020(1)(a)(3)(a) creates an exception for a water district created under KRS Chapter 74 that undertakes a water line extension or improvement project and the water line extension or improvement project will not cost more than \$500,000. Montgomery District #1 is a water district created under KRS Chapter 74 and the proposed project costs \$300,000. However, the proposed project does not involve a waterline extension or improvement; it involves the acquisition and installation of meters and hydrants, and acquisition of trucks. The Commission has historically held that if a project is not related to a waterline extension or improving an existing waterline, then KRS 278.020(1)(a)(3)(a) does not apply.⁶ Because the proposed project does not involve an extension or improvement to waterlines, the Commission concludes that KRS 278.020(1)(a)(3)(a), is inapplicable to Montgomery District #1's request for a CPCN.

⁶ See Case No. 2016-00255.

The Commission also reviewed the proposed project to determine whether an exemption for an ordinary extension in the usual course of business under 807 KAR 5:001E, Section 15(3), and concludes that the proposed project does not satisfy the regulatory requirements. This is because the proposed project will involve a sufficient capital outlay that materially affects its existing financial condition. The financed portion of the proposed project represents 16.8 percent of the net plant. There will be an increase of 8.42 percent or \$4.05 to the average bill, which increases the average from \$48.09 to \$52.14 for a customer using 5,000 gallons per month. As discussed above, a proposed project must meet both prongs on 807 KAR 5:001E, Section 15(3), to support a finding that a project is exempt from the requirement established in KRS 278.020 to obtain a CPCN. Due to increase of rates and the net plant percentage, the Commission finds that Montgomery District #1's proposed project is not exempt under 807 KAR 5:001E, Section 15(3), from the requirement of obtaining a CPCN.

Next, the Commission examined the totality of information provided in the application and concludes that, while there is no regulation to allow for deviations of 807 KAR 5:069, Section 2(4), (5), and (6)(c), and Section 5, Montgomery District #1 presented sufficient information that these filing requirements do not apply to the type of project proposed under KRS 278.023. This is because the filing requirements in 807 KAR 5:069, Sections 2 and 5, apply to construction of utility facilities and the evidence of record supports a finding that no construction will occur. Further, Montgomery District #1 provided sufficient evidence regarding the purchase of the equipment to improve its water system. Based upon the above discussion, the Commission finds that 807 KAR 5:069, Section 2(4), (5), (6)(a)(1), and (6)(c), and Section 5, filing requirements are not

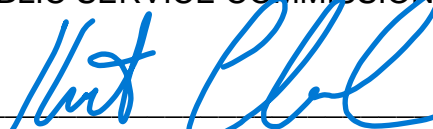
applicable, and the application should be accepted for filing as of the date of service of this Order.

The Commission notes that this decision is based upon the unique facts presented and the express language in KRS 278.023 and 807 KAR 5:069. The Commission further notes that applications requesting a CPCN under KRS 278.020 are not subject to the same limited review as applications filed under KRS 278.023, and thus utilities should not rely upon this Order as precedent for applications filed under KRS 278.020. The Commission will address Montgomery District #1's application in a separate Order that will be issued within the statutory period established by KRS 278.023.


IT IS THEREFORE ORDERED that:

1. Montgomery District #1's motion for a deviation is granted in part and denied in part as discussed in this Order.
2. Montgomery District #1's application is deemed filed as of the date of service of this Order.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner



ATTEST:


Executive Director

*Montgomery County Water District #1
4412 Camargo Road
Mt. Sterling, KY 40353

*Sandra Morton
Montgomery County Water District #1
4412 Camargo Road
Mt. Sterling, KY 40353

*Teresa Shields
U.S. Dept. of Agriculture Rural Development
771 Corporate Dr.
STE 200
Lexington, KENTUCKY 40502

*Honorable W. Randall Jones
Attorney at Law
Rubin & Hays
Kentucky Home Trust Building
450 South Third Street
Louisville, KENTUCKY 40202