

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF HARDIN)	CASE NO.
COUNTY WATER DISTRICT NO. 1 FOR)	2023-00143
TRANSFER AND ACQUISITION)	

ORDER

On May 5, 2023, Hardin County Water District No. 1 (Hardin District No. 1) and the city of West Point, Kentucky (West Point System) (collectively, Joint Applicants) filed a joint application, pursuant to KRS 278.020(6), (7), and (10), for approval of the acquisition of ownership, transfer, and control to Hardin District No. 1 of West Point System’s water and wastewater facilities, assets, and accounts. On May 31, 2023, Joint Applicants filed an amended application to additionally request Commission approval under KRS 278.020(1) in the form of a Certificate of Public Convenience and Necessity (CPCN) for the proposed acquisition. Joint Applicants responded to two requests for information from Commission Staff. This matter is now before the Commission for a decision on the merits.

LEGAL STANDARD

KRS 278.020(6) and 278.020(7) require prior Commission approval of the transfer or control of any “utility.”

Because KRS 278.020(6) and (7) apply only to the transfer of jurisdictional utilities, the Commission has previously held that the acquisition of a non-jurisdiction utility by a jurisdictional utility did not require any prior approval pursuant to KRS 278.020. However,

in Case No. 2020-00028,¹ the Commission held that a utility purchasing a non-jurisdictional system must obtain a CPCN pursuant to KRS 278.020(1)(a) before it commences operating the non-jurisdictional utility. Because the acquisition of a non-utility's system may impact a jurisdictional utility's ability to provide adequate and reasonable service, either to customers of the system to be acquired or the customers of the acquiring utility, requiring approval under KRS 278.020(1)(a) ensures that the Commission discharges its statutory duty to ensure that the acquiring utility's ability to provide adequate service at fair, just, and reasonable rates is not impaired.

KRS 278.020(1)(a) states, in relevant part, that:

[n]o person . . . shall commence providing utility service to or for the public or begin the construction of any plant . . . until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.

The Commission's standard of review regarding a CPCN is well settled. Under KRS 278.020(1), 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. To obtain a CPCN, the 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.

¹ Case No. 2020-00028, *Electronic Proposed Acquisition by Bluegrass Water Utility Operating Company, LLC of Wastewater System Facilities and Subsequent Tariffed Service to Users Presently Served by Those Facilities* (Ky. PSC June 19, 2020), Order.

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

[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, we have held that the applicant must demonstrate that a thorough review of all reasonable alternatives has been performed.⁵ The fundamental principle of reasonable least-cost alternative is embedded in such an analysis. Selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.⁶ All relevant factors must be balanced.⁷

BACKGROUND

Hardin District No. 1:

Hardin District No. 1 provides retail water service to approximately 10,756 customers in Hardin County, Kentucky and provides wholesale water service to Meade

³ *Kentucky Utilities Co. v. Pub. Serv. Comm’n*, 252 S.W.2d 885 (KY. 1952) at 890.

⁴ *Kentucky Utilities Co. v. Pub. Serv. Comm’n*, 252 S.W.2d 885 (KY. 1952) at 890.

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

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

⁷ Case No. 2005-00089, Aug. 19, 2005 final Order at 6.

County Water District and three small cities in Kentucky.⁸ In addition, Hardin District No. 1 provides wastewater service to approximately 9,349 customers in Hardin County, Kentucky, and owns and operates the water treatment, water distribution, wastewater and storm water drainage systems serving the Fort Knox Military Installation.⁹

West Point System:

West Point System currently owns and operates water and wastewater facilities throughout West Point, Kentucky, located in Hardin County, and currently serves approximately 400 total water and wastewater customers with 45,547 feet of water mains of various sizes inclusive of appurtenances.¹⁰

The Transaction

On April 25, 2023, Joint Applicants entered into a “Water System and Wastewater System Acquisition Agreement” (Acquisition Agreement).¹¹ The sale includes all tangible assets of the West Point System and all interest West Point System has in real property pertaining thereto, as well as all utility reserves, grant funding, and sinking fund reserves that may legally be transferred from West Point System to Hardin District No. 1.

The consideration for the purchase will be \$950,000 (Purchase Price).¹² The Purchase Price will first be allocated to pay in full the outstanding indebtedness owed by West Point to the United States Department of Agriculture/Rural Development-DCFO in the approximate amount of \$245,000 and the Kentucky Infrastructure Authority in the

⁸ Joint Application at 3.

⁹ Joint Application at 3.

¹⁰ Joint Application at 3-4.

¹¹ Joint Application, Exhibit A – Acquisition Agreement.

¹² Joint Application, Exhibit A.

approximate amount of \$190,000 (Outstanding Indebtedness).¹³ The difference between the Purchase Price and the amount of Outstanding Indebtedness will be paid by Hardin District No. 1 to West Point System over a period of three years.¹⁴ West Point System will also remit and assign to Hardin District No. 1 approximately \$48,000 previously received from ARPA/CWP/SB36 funding and will also remit and assign to Hardin District No. 1 approximately \$78,000 which has been allocated to West Point System but not yet received from the ARPA/CWP/SB36 funding.¹⁵

Joint Applicants proposed that West Point System's customers acquired by Hardin District No. 1 via the Agreement will be adjusted to Hardin District No. 1's current rates.¹⁶ The acquired customers will have an estimated increase of \$0.06 per billing cycle on water service based on an average estimated use of 4,500 gallons; and the acquired customers will have an estimated decrease of \$3.36 per billing cycle on sewer service based on an average estimated use of 4,500 gallons.¹⁷

Buyer's Financial and Technical Resources

Hardin District No. 1 recently provided information in Case No. 2023-00144¹⁸ regarding its financial ability to ensure the continuity of water and wastewater service to the former customers of West Point System. In Case No. 2023-00144, Hardin District

¹³ Joint Application, Exhibit A.

¹⁴ Joint Application, Exhibit A.

¹⁵ Joint Application, Exhibit A.

¹⁶ Joint Application at 4.

¹⁷ Joint Application at 4.

¹⁸ Case No. 2023-00144, *Electronic Application of Hardin County Water District No. 1 for Approval of Indebtedness Pursuant to KRS 278.300(1) and KRS 278.300(8) and Related Sections Authorizing* (Ky. PSC June 30, 2023).

No. 1 was also authorized to borrow up to \$10,000,000 from Cecilian Bank using a line of credit, part of which Hardin District No.1 proposed for use as interim financing in preparation for this proposed acquisition.¹⁹

DISCUSSION

CPCN:

The Commission finds that West Point System, a municipal water and wastewater system, is not a “utility” subject to the Commission’s jurisdiction pursuant to KRS 278.010(3), and thus, neither KRS 278.020(6) nor KRS 278.020(7) are applicable to the proposed transaction. However, as previously held by the Commission, a utility purchasing a non-jurisdictional system must obtain a CPCN pursuant to KRS 278.020(1)(a) before it commences operating the non-jurisdictional utility.²⁰

To establish that public convenience and necessity require the service or construction, a utility is generally required to demonstrate a need and an absence of wasteful duplication. When reviewing whether to grant a CPCN authorizing a utility to purchase a non-jurisdictional system, the Commission also looks at whether the acquisition will impair the utility’s ability to provide reasonable and adequate service to the utility’s existing customers or the customers of the system the utility is acquiring.²¹

The need demonstrated in this proceeding is for adequate management and operation of the West Point System. In response to a request for information propounded by Commission Staff, Mayor of West Point, Richard Ciresi, stated that the city lacks the

¹⁹ Case No. 2023-00144, June 30, 2023 Order.

²⁰ Case No. 2020-00028, June 19, 2020 Order.

²¹ Case No. 2020-00028, June 19, 2020 Order at 16.

technical expertise, funding, and facilities to maintain a functioning sewer plant.²² Further, Mayor Ciresi stated that the city has a declining population, a small tax base, and does not have the personnel nor the expertise to operate the system successfully or to perform much needed upgrades.²³ In support of this position, Mayor Ciresi referred to Exhibit 2 to his response, a 2021 Agreed Order between West Point and the Kentucky Division of Water, concerning numerous violations of KRS Chapter 224. Having considered the evidence of record, the Commission finds a need for adequate management and operation of the West Point System.

Because the current operator of the West Point System, the city of West Point, Kentucky, has entered into an Acquisition Agreement with Hardin District No.1, there is no wasteful duplication of efforts or facilities. Therefore, the Commission finds the proposed acquisition will not result in wasteful duplication.

For the reasons discussed below, the Commission finds that the service Hardin District No. 1 provides to its current customers will not be impaired due to this acquisition, nor will service to customers of the West Point System suffer as a consequence. Hardin District No. 1 currently supplies certified operator employees to the West Point System, and will not need to hire additional personnel as a result of the acquisition.²⁴ Joint Applicants stated that Hardin District No. 1 will not raise rates to its current customers as a result of the acquisition.²⁵ Joint Applicants stated that Customers of the West Point

²² Joint Applicant's Response to Commission Staff's First Request for Information (Staff's First Request) (filed June 9, 2023), Item 2.

²³ Joint Applicant's Response to Staff's First Request, Item 2.

²⁴ Joint Applicants Response to Staff's First Request, Item 5.

²⁵ Application at 4.

System will see an estimated increase of \$0.06 per billing cycle on water service and an estimated decrease of \$3.36 per billing cycle on sewer service.²⁶

As noted by the Commission in Case No. 2020-00346,²⁷ if the West Point System were a jurisdictional utility and not a municipal system, the Commission would review the proposed transaction pursuant to KRS 278.020(6) and KRS 278.020(7). The Commission therefore includes a discussion of the requirements of KRS 278.020(6) solely to demonstrate that if this transaction were subject to that statutory provision, the requirements have been met.

KRS 278.020(6) provides that:

No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The Commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

Here, the West Point System currently provides water and sewer service to residents of West Point in Hardin County, Kentucky and such service is necessary for the customers in that town. West Point System's service territory is adjacent to Hardin District No. 1's existing service territory.²⁸ Hardin District No. 1 currently operates water and wastewater services to over 10,000 customers in Hardin County, Kentucky, as well as water treatment, distribution, and wastewater services to the Fort Knox Installation, which

²⁶ Application, at 4.

²⁷ Case No. 2020-00346, *Electronic Application of Essential Utilities, Inc., PNG Companies, LLC, Peoples Gas KY LLC, and Delta Natural Gas Company, Inc. for (1) a Declaratory Order and (2) Increase in Rates for Peoples Gas KY LLC* (Ky. PSC Feb. 22, 2022).

²⁸ Joint Application, Exhibit B.

demonstrates that Hardin District No. 1 will be able to provide reasonable and adequate service to its existing customers and the customers of the West Point System following the acquisition. Thus, the Commission finds that Hardin District No. 1 has the technical and managerial ability to provide reasonable and adequate service to the customers of West Point System without impairing the service it provides to its current customers.

Hardin District No. 1 also provided evidence that it has access to financial resources necessary to provide reasonable and adequate service. In addition to the evidence of its general financial condition presented in Case No. 2023-00144, Hardin District No. 1 also obtained Commission approval to borrow up to \$10,000,000 from a revolving line of credit.²⁹ Joint Applicants claimed that the approval of that funding was instrumental to assist in financing this acquisition.³⁰ Thus, the Commission finds that Hardin District No. 1 has the financial ability to provide reasonable service and the financial integrity to ensure the continuity of water and sewer service without impairing the service it provides to its current customers.

For the reasons discussed above, among others, the Commission finds that the acquisition shall be approved.

Tariff

Pursuant to 807 KAR 5:011, Section 11, a person purchasing an existing utility is required to adopt the utility's existing tariffs on file with the Commission, including any rates and service requirements therein, before filing a new or revised tariff for the predecessor utility or incorporating the predecessor utility into the successor utility's

²⁹ Case No. 2023-00144, June 30, 2023 Order.

³⁰ Amended Joint Application at 2.

existing tariff. However, because West Point System is not a utility as defined by KRS 278.010(3), there is not a tariff on file with the Commission for West Point System that Hardin District No. 1 can adopt. Hardin District No. 1 instead proposes for West Point System's customers be adjusted to Hardin District No. 1's current rates pursuant to its existing tariff.

Because West Point System is not a utility regulated by the Commission, it does not report expense or revenue data to the Commission on a regular basis and is not required to keep its books in accordance with the Uniform System of Accounts applicable to public utilities. As a result, there is limited data available regarding the operation of the West Point System to set initial rates. However, the proposed adoption of West Point System's customers to Hardin District No. 1's current rates results only in a \$0.06 increase in water service per billing cycle and a decrease of \$3.36 in wastewater service per billing cycle. For this reason, among others, the Commission agrees that Hardin District No. 1's proposed adoption of West Point System's customers to Hardin District No. 1's current rates is reasonable under the circumstances.

The Commission further finds that Hardin District No. 1 should amend its tariff to make its general rules and regulations applicable to West Point System's service territory upon closing.³¹ Thus, the Commission will approve Joint Applicants' proposal for West Point System's customers be adjusted to Hardin District No. 1's current rates pursuant to Hardin District No. 1's existing tariff and directs Hardin District No. 1 to amend its tariff to apply the general conditions to West Point System's service territory upon closing.

³¹ Hardin District No. 1's tariff includes all applicable service territories in the heading on Sheet 1.

IT IS THEREFORE ORDERED that:

1. Pursuant to KRS 278.020(1)(a), Hardin District No. 1 is granted a Certificate of Public Convenience and Necessity to provide utility service to and for the public to the West Point System.
2. Joint Applicants' application for Commission approval of Hardin District No. 1's acquisition of the West Point System is granted.
3. The initial rates and terms of service proposed by Hardin District No. 1 for customers of the West Point System are approved, effective on the date of closing.
4. Within ten days of completion of the transfer of the West Point System to Hardin District No. 1, Hardin District No. 1 shall notify the Commission in writing of the date that the transfer occurred.
5. Within ten days of closing of the acquisition of the West Point System, Hardin District No. 1 shall file a revised tariff sheet with the Commission, using the Commission's electronic Tariff Filing System, indicating application of the rates approved in this Order to the West Point System service territory.
6. This case is closed and removed from the Commission's docket.

PUBLIC SERVICE COMMISSION

Chairman



Vice Chairman

Mary Pat Regan ^{by AH}

Commissioner _{with permission}

Chairman Kent A. Chandler did not participate in the decision concerning this case.



ATTEST:

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