

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BIG SANDY)	
WATER DISTRICT FOR A CERTIFICATE OF)	
PUBLIC CONVENIENCE AND NECESSITY TO)	
DEPLOY AN ADVANCED METERING)	CASE NO.
INFRASTRUCTURE AND GEOGRAPHIC)	2023-00163
INFORMATION SYSTEM, ISSUANCE OF)	
EVIDENCE OF INDEBTEDNESS, AND REQUEST)	
FOR EXPEDITED RELIEF)	

ORDER

On May 24, 2023, Big Sandy Water District (Big Sandy District) filed an application for a Certificate of Public Convenience and Necessity (CPCN) and authority to issue evidences of indebtedness under KRS 2789.300. Along with the application, Big Sandy District filed a motion, pursuant to 807 KAR 5:001, Section 16(10), for a deviation from the filings requirements in 807 KAR 5:001, Section 15(2)(d)(1) and (2), 807 KAR 5:001, Section 18(1)(g) and (2)(c), and KRS 322.340. The motion for a deviation is now before the Commission for a decision on the merits.

LEGAL STANDARD

Commission regulation 807 KAR 5:001, Section 15 establishes certain filing requirements for applications for CPCNs. Section 15(2)(d)(1) requires that an application for a CPCN be filed with maps to a suitable scale showing the location or rout of the proposed construction or extension and the location of any like facilities owned by others located within the map area. Section 15(2)(d)(2) requires that an application for a CPCN be filed with plans, specifications, and drawings of the proposed plant, equipment, and

facilities. KRS 322.340 requires that any plans, specifications, drawing, plats, and reports prepared by a registered engineer be signed, sealed, and dated by an engineer registered in Kentucky.

Commission regulation 807 KAR 5:001, Section 18 establishes certain filing requirements for applications for authority to issue evidences of indebtedness. Much like Section 15(2)(d) for CPCN cases discussed above, Section 18(2)(c) requires an application for financing authority to be filed with “[m]aps and plans of the proposed property and constructions together with detailed estimates in a form that they can be reviewed by the commission's engineering division.” If the applicant is a water district, the application for financing authority must be filed with “a copy of the applicant's written notification to the state local debt officer regarding the proposed issuance.”

Section 16(10) of 807 KAR 5:001, on which Big Sandy District relies, allows waivers to the filing requirements in Section 16, which applies to applications for general rate adjustments. For that reason, Section 16(10) would not apply to the filing requirements established in Section 15 and Section 18 of 807 KAR 5:001 for applications for CPCNs and financing authority. However, pursuant to 807 KAR 5:001, Section 22, the Commission may grant deviations from other sections of 807 KAR 5:001 “in special cases, for good cause shown.”

DISCUSSION AND FINDINGS

Big Sandy District argued that there is good cause to grant a deviation from the requirements that it file maps, plans, specifications, and drawings in 807 KAR 5:001 Section 15(2)(d)(1) and (2) and Section 18(2)(c), because the proposed projects are only modifying existing infrastructure, such that Big Sandy District has not prepared a separate

rout, construction map, plans, specification, or drawings related to the project. Big Sandy District similarly argued there is good cause to deviate from KRS 322.340, because no engineering plans, specifications, drawings, or plats requiring certification of an engineer have been prepared.

The Commission notes that Big Sandy District filed a relatively detailed description of the projects and a draft contract with the application. Further, all but one of the projects are not the type of projects that would typically have engineering plans, such as replacing customer meters, implementing GIS mapping, and implementing leak detection tools. Further, while additional detail could have been provided for a zone meter project proposed by Big Sandy District as part of the broader projects, it did provide a map of the proposed zones that will be created by the meters and identified and described the zone meters that would be used and the number that would be placed, among other details that allow review of the project. Thus, having reviewed the record, the nature of the projects, and being otherwise sufficiently advised, the Commission finds that good cause does exist to grant the requested deviations from 807 KAR 5:001 Section 15(2)(d)(1) and (2) and Section 18(2)(c).

Big Sandy District sought a waiver of KRS 322.340 based on the argument that no engineering plans, specifications, drawings, or plats requiring the certification of an engineer pursuant to KRS 322.340 have been prepared for this project. The Commission notes that KRS 322.340 is not a filing requirement established by the Commission, which raises questions regarding the extent to which the Commission can waive that requirement. However, because the Commission has found good cause to grant a deviation from the requirement that Big Sandy District file plans, specifications, and

drawings that could require an engineer's signature and seal under KRS 322.340, there is no need to grant a deviation. Thus, the Commission finds that Big Sandy District's request for a waiver from KRS 322.340 should be denied as moot.

Big Sandy District seeks deviation from the requirement in 807 KAR 5:001, Section 18(1)(g) that it file "a copy of [its] written notification to the state local debt officer," because the Department of Local Government (DLG) does not require that notice be provided until after the sale of bonds and Big Sandy District cannot issue the bonds until approved by the Commission.¹ Big Sandy District did provide a draft of the notice to be sent,² and committed to filing a copy of the notice in this matter once it has been submitted to the DLG.³

When Big Sandy District states that it is not required to give notice to DLG until after the sale of the bonds, it is referring to the requirements of KRS 65.117, which prohibit water districts, among other governmental entities, from entering "into any financing obligation of any nature, whether evidenced by note . . . , [or] by bond issuance . . . without first notifying the state local debt officer in writing." Further, 807 KAR 5:001, Section 18(1)(g), by referring to filing "the applicant's written notification to the state local debt officer" as opposed to creating a new notification requirement, appears to be referring specifically to filing the notice required by KRS 65.117. However, DLG does not require such notice until after bonds are issued. Because the notice Big Sandy District is supposed to file is not yet required, the Commission agrees that good cause exists for

¹ Motion for Deviation from Filing Requirement for Application for Certificate of Public Convenience and Necessity by Big Sandy Water District (filed May 24, 2023) at 4.

² Application, Exhibit 7.

³ Application at 11.

granting the deviation from 807 KAR 5:001, Section 18(1)(g) on the condition that Big Sandy District provides a copy of the notice when sent. Thus, having reviewed the record and being otherwise sufficiently advised, the Commission finds that Big Sandy District's motion for a deviation from 807 KAR 5:001, Section 18(1)(g) should be granted and that Big Sandy District should be required to file a copy of the notice once it has been sent.

The Commission notes that in a letter issued on the date of this Order that Commission Staff has indicated that it has not identified any deficiencies other than those for which Big Sandy District is requesting a deviation herein. For that reason, Big Sandy District's application for a CPCN and financing authority should be accepted for filing as of the date of this Order.


IT IS THEREFORE ORDERED that:

1. Big Sandy District's motion for deviations from the filing requirements is granted in part and denied in part, subject to the conditions set forth herein.
2. Big Sandy District's motion is granted with respect to the requirements in 807 KAR 5:001, Section 15(2)(d)(1) and (2), and 807 KAR 5:001, Section 18(1)(g) and (2)(c).
3. Big Sandy District's motion is denied as moot with respect to the requirements in KRS 322.340.
4. Big Sandy District shall file, in this matter, a copy of the written notification sent to the state local debt officer regarding the proposed issuance within ten days of the notice being sent to the local debt officer.
5. Big Sandy District's application for a CPCN and authority to issue evidences of indebtedness as accepted for filing as of the date this Order is entered.

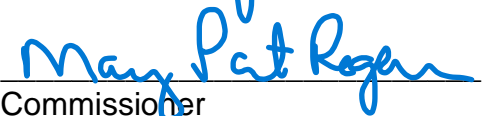
PUBLIC SERVICE COMMISSION



Chairman




Vice Chairman



Commissioner

ENTERED
JUN 15 2023
rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

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