

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION FOR A	)	CASE NO.
DECLARATORY ORDER OF BURKESVILLE GAS	)	2023-00180
COMPANY, INC.	)	

ORDER

On May 22, 2023, Burkesville Gas Company, Inc. (Burkesville Gas) filed a verified application pursuant to 807 KAR 5:001, Section 19, for an Order declaring that it was not required to obtain the Commission’s prior approval to take out a COVID Economic Disaster Loan from the United States Small Business Administration (SBA). Burkesville Gas also seeks an Order declaring that it is not required to obtain a Certificate of Public Convenience and Necessity (CPCN) for small projects it intends to undertake to extend natural gas service in Cumberland County. No responses to the application or motions to intervene have been filed.

BACKGROUND

Burkesville Gas Company, Inc. (Burkesville Gas) is a natural gas distribution utility subject to the Commission’s plenary jurisdiction. Burkesville Gas furnishes retail natural gas service to customers in Cumberland County, Kentucky.

In its application, Burkesville Gas stated that it took out a low-interest (3.75 percent), 30-year loan COVID Economic Disaster Loan from the SBA. Burkesville Gas did not state when the loan was obtained or the original amount of the loan nor

provide with its application a copy of the instrument of indebtedness. Burkesville Gas stated that it placed \$364,000 of the borrowed funds into an escrow account.

Burkesville Gas and its affiliate, Apache Gas Transmission Company, Inc. (Apache Transmission) were parties in Case No. 2020-00085.<sup>1</sup> On March 11, 2022, Burkesville Gas and Apache Transmission filed a motion in that case for declaratory order that an SBA-administered COVID emergency loan did not require prior Commission approval pursuant to the exception in KRS 278.300(10). At the time of the motion, the utilities had not incurred the debt. There is no ruling on the motion in the case record.

Burkesville Gas stated that it has wanted to extend its gas distribution system to underserved areas in Cumberland County for many years and asserts that the proceeds from the SBA loan will enable it to complete necessary extensions and improvements. According to Burkesville Gas, the first phase of the extension of its pipeline distribution system, and that for which it seeks approval in the instant case, will consist of extending the system to commercial businesses on the south side of Highway 90, just east of Marrowbone, Kentucky.

Burkesville stated that it estimates the cost of this extension of gas service, including installation, materials, subcontractor fees for directional boring, and professional fees to be approximately \$5,000. Burkesville Gas submitted with its application a cost breakdown and map of the project.

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<sup>1</sup> Case No. 2020-00085, *Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC Mar. 16, 2020).

## LEGAL STANDARD

### Declaratory Order

Pursuant to 807 KAR 5:001, Section 19, the Commission may, upon application by a person substantially affected, “issue a declaratory order . . . with respect to the meaning and scope of an order or administrative regulation of the commission or provision of KRS Chapter 278.”<sup>2</sup> An application for a declaratory order must:

- (a) Be in writing;
- (b) Contain a complete, accurate, and concise statement of the facts upon which the application is based;
- (c) Fully disclose the applicant's interest;
- (d) Identify all statutes, administrative regulations, and orders to which the application relates; and
- (e) State the applicant's proposed resolution or conclusion.<sup>3</sup>

### SBA Loan

KRS 278.300(1) provides that no utility shall issue evidence of indebtedness until it has been authorized by the Commission. Section 10 of the statute exempts from this requirement the issuance of evidence of indebtedness “is subject to the supervision or control of the federal government or any agency thereof . . . .”

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<sup>2</sup> See Case No. 2020-00344, *Electronic Application of Hardin County Water District No. 1 for A Declaratory Order Regarding the Applicability of KRS 278.020(1) to Proposed Improvements to Muldraugh Water Treatment Plant* (Ky. PSC Dec. 3, 2020), Order at 13 (finding that construction for service to a particular customer and paid for by a surcharge upon that customer was an ordinary extension in the usual course of business); Case No. 2014-00292, *Application of East Kentucky Power Cooperative, Inc. for an Order Declaring the Glasgow Landfill Gas to Energy Project to Be an Ordinary Extension of Existing Systems in the Usual Course of Business and a Joint Application of Farmers Rural Electric Cooperative Corporation and East Kentucky Power* (Ky. PSC Apr. 2, 2015), Order at 9-10 (finding that construction for service to a particular customer paid for via special contract was an ordinary extension in the usual course of business).

<sup>3</sup> 807 KAR 5:001, Section 19(2).

## CPCN

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.<sup>4</sup> To obtain a CPCN, the utility must demonstrate a need for such facilities and an absence of wasteful duplication.<sup>5</sup>

“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. [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.<sup>6</sup>

“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.”<sup>7</sup> 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.<sup>8</sup>

Although cost is a factor, selection of a proposal that ultimately costs more than an

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<sup>4</sup> KRS 278.020(1).

<sup>5</sup> *Kentucky Utilities Co. v. Pub. Serv. Comm 'n*, 252 S.W.2d 885 (Ky. 1952).

<sup>6</sup> *Kentucky Utilities Co. v. Pub. Serv. Comm 'n*, 252 S.W.2d at 890.

<sup>7</sup> *Kentucky Utilities Co. v. Pub. Serv. Comm 'n*, 252 S.W.2d at 890.

<sup>8</sup> 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.

alternative does not necessarily result in wasteful duplication.<sup>9</sup> All relevant factors must be balanced.<sup>10</sup>

An exception to the CPCN requirement is provided in KRS 278.020(1)(a)(2) for “[o]rdinary extensions of existing systems in the usual course of business.” This exception is further described in 807 KAR 5:001, Section 15(3), which states:

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.

Thus, no CPCN is required for extensions “that do not result in the wasteful duplication of utility plant, do not compete with the facilities of existing public utilities, and do not involve a sufficient capital outlay to materially affect the existing financial condition of the utility involved or to require an increase in utility rates.”<sup>11</sup> Applying that standard, the Commission has previously found proposals to be ordinary extensions in the usual

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<sup>9</sup> 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.

<sup>10</sup> Case No. 2005-00089, *East Kentucky Power Cooperative, Inc.* (Ky. PSC Aug. 19, 2005), Order at 6.

<sup>11</sup> Case No. 2000-00481, *Application of Northern Kentucky Water District (A) for Authority to Issue Parity Revenue Bonds in the Approximate Amount of \$16,545,000; and (B) A Certificate of Convenience and Necessity for the Construction of Water Main Facilities* (Ky. PSC Aug. 30, 2001), Order at 4.

course of business when the cost of the capital outlay was borne by an entity other than the utility.<sup>12</sup>

### FINDINGS

The Commission agrees with Burkesville Gas that a loan funded, serviced, and administered by the SBA would not require prior Commission approval under the exception in KRS 278.300(10) for debt subject to federal supervision and control. Burkesville Gas, however, did not file a copy of the instrument of indebtedness with its application for declaratory order. The Commission finds that it cannot grant the requested relief regarding the SBA loan without reviewing the loan documents and that the motion of Burkesville Gas that it did not need the Commission's approval to take out the loan should be denied without prejudice. The Commission further finds that Burkesville Gas should be required to file a copy of the instrument of indebtedness within 21 days of the entry of the order.

Burkesville Gas asserts that a CPCN is not required for the first phase of the planned of its gas distribution system because it is in the ordinary course of business and is small in scope. Burkesville Gas states that the work will involve the extension of mains and service lines within, adjacent or near to the current Burkesville service areas.

The Commission finds that the proposed extension of Burkesville Gas' distribution

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<sup>12</sup> See Case No. 2020-00344, *Electronic Application of Hardin County Water District No. 1 for A Declaratory Order Regarding the Applicability of KRS 278.020(1) to Proposed Improvements to Muldraugh Water Treatment Plant* (Ky. PSC Dec. 3, 2020), Order at 13 (finding that construction for service to a particular customer and paid for by a surcharge upon that customer was an ordinary extension in the usual course of business); Case No. 2014-00292, *Application of East Kentucky Power Cooperative, Inc. for an Order Declaring the Glasgow Landfill Gas to Energy Project to Be an Ordinary Extension of Existing Systems in the Usual Course of Business and a Joint Application of Farmers Rural Electric Cooperative Corporation and East Kentucky Power* (Ky. PSC Apr. 2, 2015), Order at 9–10 (finding that construction for service to a particular customer paid for via special contract was an ordinary extension in the usual course of business).

system would constitute an extension of facilities in the ordinary course of business based on the cost and scope of the work proposed by the utility. The Commission also finds that any additional work beyond the scope of that set forth in the utility's application is subject to independent review by the Commission.

IT IS THEREFORE ORDERED that:

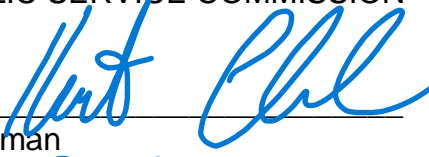
1. The application of Burkesville Gas for a declaratory order that it was not required pursuant to KRS 278.300(1) to obtain prior Commission approval to enter into a loan agreement with the SBA is denied without prejudice.

2. The application of Burkesville Gas for a declaratory order that it is not required to obtain a CPCN from the Commission to extend its gas distribution system in the ordinary course of business, as described in its verified application, is granted.

3. Any facility extension beyond that described in the application is not within the scope of this Order.

4. Within 21 days of the date of service of this Order, Burkesville Gas shall file all loan documents and evidence of indebtedness relating to the SBA loan described in the application.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ENTERED  
OCT 06 2023 bsb  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director



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