

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BLUEGRASS)	
WATER UTILITY OPERATING COMPANY, LLC)	
FOR A CERTIFICATE OF PUBLIC CONVENIENCE)	CASE NO.
AND NECESSITY FOR THE INSTALLATION OF)	2022-00216
MONITORING EQUIPMENT AND FOR A)	
CORRESPONDING LIMITED WAIVER OF DAILY)	
INSPECTION REQUIREMENTS)	

ORDER

On August 22, 2023, Bluegrass Water Utility Operating Company, LLC (Bluegrass Water) filed a motion for partial rehearing, pursuant to KRS 278.400, of the Commission's August 2, 2023 Order that denied Bluegrass Water's Certificate of Public Convenience and Necessity (CPCN) application and granted Bluegrass Water's request for a deviation for the daily inspection requirements found in 807 KAR 5:071, Section 7(4). On September 8, 2023, the Commission issued an Order granting Bluegrass Water's motion solely on the issues of whether a CPCN should be granted for remote monitoring equipment installation at its Carriage Park, Arcadia Pines, and Marshall Ridge wastewater treatment facilities and whether daily in-person inspection requirements at those facilities should be waived.

LEGAL STANDARD

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.¹ 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.

[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, the Commission has held that the applicant must demonstrate that a thorough review of all reasonable alternatives has been performed.⁵ Although cost is a factor,

¹ KRS 278.020(1). Although the statute exempts certain types of projects from the requirement to obtain a CPCN, the exemptions are not applicable.

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

³ *Kentucky Utilities Co.*, 252 S.W.2d at 890.

⁴ *Kentucky Utilities Co.*, 252 S.W.2d at 890.

⁵ 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.

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

Regarding Bluegrass Water's deviation request, 807 KAR 5:071, Section 7(4), states, in relevant part, that:

Each sewage utility shall adopt procedures for inspection of its sewage treatment facilities to assure safe and adequate operation of its facilities and compliance with commission rules. . . . Unless otherwise authorized in writing by the commission, the sewage utility . . . shall make inspections of all mechanical equipment on a daily basis.

The Commission has previously indicated that inspection procedures that deviate from the daily inspection requirement in 807 KAR 5:071, Section 7(4), could be authorized if the alternative inspection procedures proposed would result in cost savings and would not affect the safe and adequate operations of the sewer facilities.⁸

⁶ 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.

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

⁸ See Case No. 2017-00201, *Garrison-Quincy-Ky-O-Heights Water District Request for a Deviation from the Daily Inspection of Sewer Grinding Pump Stations* (Ky. PSC Jan. 22, 2018), Order (“[T]he Commission finds that an alternative inspection schedule, requiring annual inspection of grinder/pump stations that ensures that, “the commission's safety requirements are being met,” as required in 807 KAR 5:006, Section 26(8), is warranted.”); Case No. 2019-00069, *Notification to Sewer Utilities Regarding Deviation Requests Pursuant to 807 KAR 5:071 Section 7(4) Concerning the Inspection Schedule of Mechanical Grinder Pump Stations* (Ky. PSC May 7, 2019), Order (“The Commission finds that daily inspections of grinder pump stations as required by 807 KAR 5:071 Section 7(4) are impractical and would serve no purpose as the individual grinder pump stations are generally located on each individual customer's property and are enclosed in a sealed case.”); see also Case No. 2014-00277, *Springcrest Sewer Company, Inc Request for Deviation from 807 KAR 5:071, Section 7(4)* (Ky. PSC Dec. 16, 2014), Order (in which the Commission acknowledged that remote monitoring could “provide a level of assurance concerning the safe and adequate operation of the sewer facilities above that of a daily visual inspection” but denied the indefinite deviation in that case because a plan for remote monitoring had not been presented).

BACKGROUND

Bluegrass Water's initial CPCN application sought approval for installation of remote monitoring systems at 13 wastewater treatment facilities. Bluegrass Water also sought a deviation from 807 KAR 5:071, Section 7(4), daily physical inspection requirements to reduce expenses, as remote monitoring equipment made daily in-person inspections redundant. Commission Staff requested information pertaining to the number of cellular communications interruptions at facilities which already had remote monitoring equipment installed, since Bluegrass Water indicated a need for satellite communications capabilities as a backup communication method for remote monitoring. Bluegrass Water provided a list which included facilities for which it was seeking to install new remote monitoring equipment.⁹

Commission Staff further inquired about this discrepancy, and Bluegrass Water responded that with the exception of one facility that was being transferred to a municipality, remote monitoring equipment had already been installed at all the facilities the CPCN application sought approval for.¹⁰ In its August 2, 2023 Order, the Commission denied the CPCN on the basis that a CPCN cannot be granted for construction that had already been completed. However, the Commission granted the deviation from 807 KAR 5:071, Section 7(4), the daily physical inspection requirements, finding that daily in-person inspections were unnecessary due to the use of remote monitoring, and approving a three-day per week physical inspection plan.

⁹ Bluegrass Water's Response to Commission Staff's Fourth Request for Information (filed Feb. 8, 2023), Item 1(b).

¹⁰ Bluegrass Water's Response to Commission Staff's Fifth Request for Information (Staff's Fifth Request) (filed May 26, 2023), Item 1(a).

On August 22, 2023, Bluegrass Water filed its motion for partial rehearing, which included a supplemental response to data requests, indicating that Bluegrass Water was once again in error, and remote monitoring equipment had not been installed at its three non-discharging facilities at Carriage Park, Arcadia Pines, and Marshall Ridge.¹¹ Bluegrass Water further stated that “nondischarging systems that have no substantial mechanical equipment creating an urgent need for remote monitoring, the Company had determined that it was not as operationally urgent to install equipment at those sites, yet.”¹² The Commission issued an Order granting rehearing on September 8, 2023. Bluegrass Water responded to two additional sets of data requests. This matter now stands ready for a decision based on the evidentiary record.

Bluegrass Water argued that remote monitoring is still necessary at these facilities because although there is no mechanical equipment,¹³ flow monitoring will help prevent problems that could result in county health department violations and eliminate the cost of daily in-person inspections if paired with the requested waiver of required 807 KAR 5:071, Section 7(4), daily inspections.¹⁴ However, flow monitoring is not required by county health departments according to Bluegrass Water.¹⁵

Bluegrass Water asserted that the optimal option is three days of in-person inspection combined with remote flow monitoring, based on discussions with its operating

¹¹ Bluegrass Water’s Supplemental Response to Staff’s Fifth Request (filed Aug. 22, 2023), Item 1(a).

¹² Bluegrass Water’s Supplemental Response to Staff’s Fifth Request, Item 1(a).

¹³ Bluegrass Water’s Response to Commission Staff’s Sixth Request for Information (Staff’s Sixth Request) (filed Oct. 26, 2023), Item 1(a).

¹⁴ Bluegrass Water’s Response to Staff’s Sixth Request, Item 1(b).

¹⁵ Bluegrass Water’s Response to Staff’s Sixth Request, Item 1(b).

contractor.¹⁶ Bluegrass Water stated that in-person inspections are necessary “to visually verify plant condition, that no leaks are occurring through the berms or in the collection system, that the drain field is operating properly, and that adequate freeboard exists on the lagoon.”¹⁷

Bluegrass Water also indicated that although remote monitoring was not a priority for systems with no mechanical equipment, remote monitoring would still be “useful for knowing when a facility is likely to be overwhelmed in ways that could cause ponding in the drain fields, overflow of lagoon berms, or damage to berms. This information could be used to trigger an additional site visit from an operator to prevent environmental damage or sanitary sewage overflows (noncompliance) from occurring.”¹⁸ Bluegrass Water noted that a Notice of Violations was received from the McCracken County Health Department and the Division of Water in 2023 for ponding and runoff caused by tree root infiltration.¹⁹

According to Bluegrass Water, the proposed installation of remote flow monitoring equipment will result in a yearly combined depreciation and operations and maintenance (O&M) of \$4,920 for all three facilities combined.²⁰ The expected O&M savings from reducing to three days per week in-person inspections is \$25,782.61 annually.²¹

¹⁶ Bluegrass Water’s Response to Commission Staff’s Seventh Request for Information (Staff’s Seventh Request) (filed Nov. 21, 2023), Item 2(a).

¹⁷ Bluegrass Water’s Response to Staff’s Seventh Request, Item 1(b).

¹⁸ Bluegrass Water’s Response to Staff’s Seventh Request, Item 1(b).

¹⁹ Bluegrass Water’s Response to Staff’s Seventh Request, Item 1(a).

²⁰ Bluegrass Water’s Response to Staff’s Sixth Request, Items 2 and 3. Installation cost will be \$15,000 per facility, depreciated over 15 years, plus \$500 per year per facility subscription fee and \$140 per year for labor for basic maintenance. Electrical use is negligible at less than \$1 per year.

²¹ Bluegrass Water’s Response to Staff’s Sixth Request, Item 4.

DISCUSSION AND FINDINGS

Having considered the application and all evidence in the record, the Commission finds that the CPCN should be granted for remote monitoring installation at Carriage Park, Arcadia Pines, and Marshall Ridge wastewater treatment facilities, provided this equipment has not already been installed at the time this Order is issued.

Bluegrass Water has established the need for real-time monitoring of system flow at these three facilities, improving compliance and allowing faster response to flow problems. Paired with reducing in-person inspections, this option will reduce O&M expense related to in-person inspections in an amount greater than the annual cost, for a net benefit. Bluegrass Water has also established lack of wasteful duplication because it has proposed a reasonable inspection plan that will ensure compliance and will decrease overall cost.

The Commission further finds that because the Carriage Park, Arcadia Pines, and Marshall Ridge wastewater treatment facilities do not include mechanical equipment, Bluegrass Water is not required to conduct daily in-person inspections because 807 KAR 5:071, Section 7(4), only requires daily inspection of mechanical components. The applicable provision in that section says “[e]ach sewage utility shall adopt procedures for inspection of its sewage treatment facilities to assure safe and adequate operation of its facilities and compliance with commission rules.” The Commission finds that a plan for three in-person inspections per week, supported by Bluegrass Water’s operator’s

recommendation, plus remote flow monitoring, assures safe and adequate operation of its facilities and compliance with commission rules.²²

IT IS THEREFORE ORDERED that:

1. Bluegrass Water is granted a CPCN to install remote monitoring equipment at its Carriage Park, Arcadia Pines, and Marshall Ridge wastewater treatment facilities.

2. Bluegrass Water's plan to perform three in-person inspection per week at the Carriage Park, Arcadia Pines, and Marshall Ridge wastewater treatment facilities after remote monitoring equipment is installed is approved as assuring safe and adequate operation of its facilities and compliance with Commission rules.

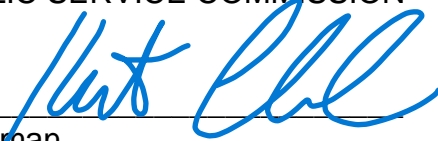
3. Bluegrass Water shall immediately notify the Commission upon knowledge of any material changes to the project, including, but not limited to, increase in cost and any significant delays in construction.

4. Any material deviation from the construction approved by this Order shall be undertaken only with the prior approval of the Commission.

5. This case is closed and removed from the Docket.

²² The Commission notes that this specific finding is not intended to apply broadly to all sewage systems—the adequacy of an inspection plan is dependent upon the type of sewer system, facts, and circumstances that may be unique to that system.

PUBLIC SERVICE COMMISSION


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JAN 12 2024 rcs
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