

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

WESTERN LEWIS-RECTORVILLE WATER AND)
GAS DISTRICT REQUEST FOR WAIVER OF) CASE NO.
KRS 278.020(1)) 2017-00141
)

ORDER

Western Lewis-Rectorville Water and Gas District (“Western Lewis”), a combined water and gas district organized pursuant to KRS Chapter 74, provides water service to approximately 2,266 customers¹ and gas service to approximately 554 customers in Lewis and Mason Counties, Kentucky.² Pursuant to KRS 278.015, Western Lewis is subject to the Commission’s jurisdiction in the same manner and, with certain exceptions, to the same extent as any other utility as defined in KRS 278.010.

PROCEDURAL

On March 16, 2017, Western Lewis submitted a request to waive the requirement of obtaining prior approval from the Commission for a Certificate of Public Convenience and Necessity (“CPCN”) in order to allow Western Lewis to continue construction of its new office building (“Application”). On March 28, 2017, the Commission notified Western Lewis that its Application was rejected because it was not filed by an attorney licensed to

¹ *Annual Report of Western Lewis Rectorville Water and Gas Division to the Public Service Commission for the Calendar Year Ended December 31, 2016* at 48.

² *Annual Report of Western Lewis Rectorville Water and Gas Division to the Public Service Commission for the Calendar Year Ended December 31, 2016* at 9 and 31.

practice in Kentucky or an attorney who has complied with SCR 3.030(2). On April 3, 2017, an attorney resubmitted the application on behalf of Western Lewis, and the Application was deemed filed on that same date.³

In the Application, Western Lewis stated that it was already in the process of constructing a new office building to replace the one that was destroyed by fire from a lightning strike in September 2016.⁴ Western Lewis accepted the bid price of \$213,536 that included rebuilding the original building, plus an additional 14-foot section on the rear of the building.⁵ Western Lewis further asserted that funding for the project would be provided from insurance proceeds of \$185,551, and that Western Lewis would contribute the balance of \$27,985 in order to build the additional structure.⁶ Western Lewis stated that there would be no loan or debt service associated with this project, the existing financial condition of the district would not be impacted, and that no customer rate increase was expected or proposed as a result of the project.⁷ According to Western Lewis, furniture and appliances were not included in the \$213,536 bid price since those items will be reimbursed by the insurance company separately.⁸

³ Application, Case No. 2017-00141, *Western Lewis-Rectorville Water & Gas District Request for Waiver of KRS 278.020(1)* (filed Apr. 3, 2017), page 1.

⁴ *Id.*

⁵ *Id.*; Western Lewis' Response to Commission Staff's First Request for Information ("Response to Staff's First Request") (filed May 23, 2017), Item 3.

⁶ Application at 1.

⁷ *Id.*

⁸ Response to Staff's First Request, Item 3.

In response to Commission Staff’s First Request for Information, Western Lewis reiterated that it had begun construction of a new office building on March 13, 2017, despite having not obtained a CPCN from the Commission.⁹ Western Lewis further stated that the construction project was approximately 60 days into a 120-day construction contract, and that the new building was under roof and construction was ongoing.¹⁰ Western Lewis described the destroyed building as being 1,921 square feet of enclosed space, and 368 square feet of a porch area.¹¹ However, the new building being constructed would be larger with 2,562 square feet of enclosed space, and 345 square feet of a porch area.¹² Finally, Western Lewis declared that it had complied with KRS 424.260 and KRS 424.130 in that the “proper advertisement and proper publishing time was utilized in the bidding process” because the construction project would be greater than \$20,000.¹³

DISCUSSION AND FINDINGS

Kentucky statute requires that a utility must acquire a CPCN prior to beginning construction of any plant, equipment, property, or facility, except for certain service connections for electric-consuming facilities and ordinary extensions in the usual course of business.¹⁴

⁹ Response to Staff’s First Request, Item 1.

¹⁰ *Id.*

¹¹ *Id.* at Item 4.

¹² *Id.*

¹³ *Id.* at Items 2(a) and (b).

¹⁴ KRS 278.020.

KRS 278.020 provides, in pertinent part, that:

No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010, except retail electric suppliers for service connections to electric-consuming facilities located within its certified territory and ordinary extensions of existing systems in the usual course of business, until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.

In the present case, Western Lewis admits to issuing requests for bids, selecting the construction company that submitted the bid price of \$213,536, and beginning construction of the new headquarters building before obtaining a CPCN from the Commission. Based upon these facts, the Commission finds that Western Lewis should have received Commission approval under KRS 278.020(1) prior to beginning construction, and thus denies Western Lewis's request for a waiver of the CPCN requirements.

Western Lewis has the responsibility to ensure that it follows the Commission's statutes and regulations, and that all statutory and regulatory approvals are properly obtained. The Commission will, by separate Order, initiate another proceeding to investigate whether Western Lewis or its Board of Commissioners should be assessed a penalty under KRS 278.990 for beginning construction without receiving a CPCN.¹⁵ Furthermore, regardless of whether a utility obtains a CPCN prior to construction, the

¹⁵ KRS 278.990(1). In pertinent part: Any officer, agent, or employee of a utility, as defined in KRS 278.010, and any other person who willfully violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, or fails to obey any order of the commission from which all rights of appeal have been exhausted, or who procures, aids, or abets a violation by any utility, shall be subject to either a civil penalty to be assessed by the commission not to exceed two thousand five hundred dollars (\$2,500) for each offense or a criminal penalty of imprisonment for not more than six (6) months, or both.

Commission will only allow reasonably incurred expenses to be included in rates. Hence, the Commission will review the reasonableness of the expenditures associated with the construction of Western Lewis's headquarters in a future rate case proceeding.

IT IS HEREBY ORDERED that:

1. Western Lewis's request to waive the requirement of obtaining prior approval from the Commission for a CPCN is denied.


2. By separate Order, the Commission will establish a proceeding to investigate whether Western Lewis or its Board of Commissioners should be assessed a penalty under KRS 278.990 for beginning construction of the headquarters building without obtaining a CPCN from the Commission.

3. This case is closed and removed from the Commission's docket.

By the Commission

ENTERED
MAR 08 2018
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director
Steven P. Pinnell

Case No. 2017-00141

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