

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BREATHITT	)	
COUNTY WATER DISTRICT FOR THE	)	
ISSUANCE OF A CERTIFICATE OF PUBLIC	)	CASE NO.
CONVENIENCE AND NECESSITY TO	)	2020-00218
CONSTRUCT A WATER IMPROVEMENTS	)	
PROJECT PURSUANT TO THE PROVISIONS	)	
OF KRS 278.020 AND 807 KAR 5:001	)	

ORDER

On July 9, 2020, Breathitt County Water District (Breathitt District) filed an application, pursuant to KRS 278.020, requesting a Certificate of Public Convenience and Necessity (CPCN) to construct a water system improvements project, as described below, and approval of the proposed plan of financing the project. No party has sought intervention in this matter. The record for this case is complete, and the matter stands ready for decision.

Breathitt District, a water district organized under KRS Chapter 74, provides retail water service to approximately 1,912 water customers<sup>1</sup> in Breathitt County, Kentucky.<sup>2</sup>

The Commission's Division of Inspections last inspected Breathitt District on March 27, 2019. Breathitt District was notified of one deficiency identified by the Commission in a letter of April 5, 2019: Utility did not have written inspection records as required by 807 KAR 5:006, Section 26(6)(a), (6)(b), and (6)(c). (No valve or construction

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<sup>1</sup> *Annual Report of Breathitt County Water District for the Year Ended December 31, 2019* at 49.

<sup>2</sup> *Id.* at 12.

equipment records). Breathitt District filed a response to the Inspection Report stating that it was conducting visual checks on the valves and construction equipment but was not documenting the process. Breathitt District attached to its response the inspection sheets that it will use going forward to document the inspection process. The Commission accepted Breathitt District's response to the deficiency and will verify compliance with Commission regulations at the next inspection.

Additionally, the Commission notes that its records indicate Breathitt District has not sought a general adjustment in base rates since its last rate case in 2017.<sup>3</sup> Commission Staff has reviewed the current financial situation of Breathitt District.<sup>4</sup> The current financial situation of Breathitt District indicates to the Commission that Breathitt District should file an application for a traditional adjustment in rates or an alternative rate adjustment within one year of the date of this Order to ensure its financial situation is sufficient. The Commission notes that in Case No. 2017-00140, Staff found that Breathitt District required an increase in revenues of \$716,695, or 85.37 percent, to produce an Overall Revenue Requirement of \$1,572,070.<sup>5</sup> In its response to Staff's report, Breathitt

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<sup>3</sup> Case No. 2017-00140, *Electronic Application of Breathitt County Water District for an Alternative Rate Adjustment* (Ky. PSC Sept. 15, 2017).

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Year	2015	2016	2017	2018	2019
Net Income	\$ (889,121)	\$ (881,928)	\$ (876,004)	\$ (1,114,683)	\$ (1,021,447)
Less: Annual Principal Payment	(18,518)	(86,750)	(87,433)	(88,877)	(89,703)
Add: Depreciation Expense	970,085	994,419	1,036,967	1,117,746	1,118,657
Cash Working Capital	\$ 62,446	\$ 25,741	\$ 73,530	\$ (85,814)	\$ 7,507
Year	2015	2016	2017	2018	2019
Cash and Cash Equivalents	\$ 183,296		\$ 254,035	\$ 49,517	\$ 57,737
Net Increase (Decrease) in Cash	(183,496)		56,920	(41,967)	36,759

Breathitt District's Audit Reports for calendar year 2016 has not been filled with the Commission.

<sup>5</sup> Case No. 2017-00140, *Electronic Application of Breathitt County Water District for an Alternative Rate Adjustment* (Ky. PSC Sept. 15, 2017), Order at 2.

District stated that it only wanted to increase its rates by 18.00 percent as submitted in its initial application to the Commission. Commission Staff's review of Breathitt District's current financial situation indicates that an increase in rates of only 18.00 percent was not sufficient to keep Breathitt District financially viable. Breathitt District is now in the position of having to file another rate case within a year when it could have increased its rates by a sufficient amount in Case No. 2017-00140. The Commission is concerned about Breathitt District's current financial condition and Breathitt District should be put on notice to request the full amount of increase that can be justified in the filing.

The Commission's analysis of Breathitt District's Annual Reports and Audits shows that from 2017 through 2019 Breathitt District's accumulated cash working capital is \$(4,777).<sup>6</sup> Given the results of the Commission's analysis Breathitt District is unable to accumulate adequate cash reserves to cover emergency repairs or expenses and, therefore, requires an increase in its base water rates.

The proposed project will provide potable water service to 32 households that currently do not have service and will rehab and upgrade several other components of the system.<sup>7</sup> There are four different areas of the system that are in need of potable water service. In the first area, Breathitt District proposes to construct a water line to the War Shoal Road area to serve approximately nine customers.<sup>8</sup> This part of the proposed project will use approximately 2,000 LF of 6-inch PVC water line, 1,013 LF of 4-inch PVC

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<sup>6</sup> \$75,530 (2017 Cash Working Capital) + \$(85,814) (2018 Cash Working Capital) + \$7,507 (2019 Cash Working Capital) = \$(4,777).

<sup>7</sup> Preliminary Engineering Report at 4.

<sup>8</sup> *Id.*

line, and 500 LF of 2-inch PVC line. The second area will provide water service to seven houses on Old Bailey Hollow located off Town Hill Road.<sup>9</sup> This part of the proposed project will utilize a pressure-reducing valve (PRV) and vault, one flush hydrant, and approximately 1,550 LF of 4-inch PVC line.<sup>10</sup> The third area will provide water service to approximately 14 households on Robinson Fork Road located off of KY 30. This part of the proposed project will consist of approximately 5,700 LF of 6-inch PVC line and 1,300 LF of 4-inch PVC line. The fourth area will provide water service to two households on Rode Fork Road located off of KY 541. This part of the proposed project will consist of approximately 3,700 LF of 4-inch PVC line and 250 LF of 2-inch PVC line.<sup>11</sup>

Also, Breathitt District states that there is a need to rehabilitate and upgrade several parts of the system. The proposed project will address the need to repaint the KY 541 water tank, will update the telemetry at ten sites, and will add generator accessible hook-ups to four different pump stations for emergency situations.<sup>12</sup>

The total estimated cost of the proposed project, including legal, administrative, development, and engineering, plus contingencies costs, is \$750,000.<sup>13</sup> Breathitt District proposes to finance 100 percent of the proposed construction project with an Appalachian Regional Commission (ARC) grant in the amount of \$750,000.<sup>14</sup> Breathitt District will not issue any evidence of indebtedness or adjust its rates to finance the proposed project.

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 4–5.

<sup>13</sup> *Id.*, Appendix B.

<sup>14</sup> Application, Exhibit A.

## Legal Standard

The Commission's standard of review of a request for a CPCN is well settled. 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, except as provided in KRS 278.020(1) and (2) and 807 KAR 5:001, Section 15(3), which are provisions not applicable to this matter. To obtain a CPCN, a utility must demonstrate a need for such facilities and an absence of wasteful duplication.<sup>15</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>16</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>17</sup> To demonstrate that a proposed facility does not result in wasteful duplication, we have held that the applicant must demonstrate that a

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<sup>15</sup> *Kentucky Utilities Co. v. Public Service Comm'n*, 252 S.W.2d 885 (Ky. 1952).

<sup>16</sup> *Id.* at 890.

<sup>17</sup> *Id.*

thorough review of all reasonable alternatives has been performed.<sup>18</sup> Selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.<sup>19</sup> All relevant factors must be balanced.<sup>20</sup>

### Findings

The Commission finds that there is no potable water service in the project areas. The Commission further finds that well water and spring water are not reliable sources of clean water. There are no other water utilities in the area; therefore, this proposed project will not result in a duplication of services. The Commission further finds that there is a need to rehabilitate and upgrade several parts of Breathitt District's system.

Due to these areas currently being unserved, the alternatives to consider were limited. The alternatives considered were (1) phase the project into smaller projects; (2) not serve the area and continue hauling water; and (3) drill new wells.<sup>21</sup> None of the alternatives considered provide Breathitt County residents with clean and dependable potable water as soon as possible.

Based upon the foregoing, the Commission finds that Breathitt District should be granted a CPCN for the proposed construction projects. The Commission further finds that Breathitt District should file an application for a traditional adjustment in rates or an

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<sup>18</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).

<sup>19</sup> See *Kentucky Utilities Co. v. Public Service 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>20</sup> Case No. 2005-00089, *East Kentucky Power Cooperative, Inc.* (Ky. PSC Aug. 19, 2005), final Order at 6.

<sup>21</sup> Preliminary Engineering Report at 4.

alternative rate adjustment within one year of the date of this Order to ensure its financial situation is sufficient.

IT IS THEREFORE ORDERED that:

1. Breathitt District is granted a CPCN for the proposed project as submitted.
2. Breathitt District's proposed plan of financing is approved.
3. The proceeds from the grant shall be used only for the purposes specified in Breathitt District's application.

4. Breathitt District is authorized to obtain a grant not to exceed \$750,000 from the ARC to fund the proposed project.

5. Breathitt District shall obtain approval from the Commission prior to performing any additional construction not expressly authorized by this Order.

6. Notwithstanding ordering paragraphs 3 and 5, if surplus funds remain after the approved construction has been completed, Breathitt District may use such surplus to construct additional plant facilities, if ARC approves of the use and the additional construction, and it will not result in a change in Breathitt District's rates for service. Breathitt District shall provide written notice of this additional construction in accordance with 807 KAR 5:069, Section 4.

7. Breathitt District shall file with the Commission documentation of the total costs of this project, including the cost of construction and all other capitalized costs (e.g., engineering, legal, and administrative), within 60 days of the date that construction is substantially completed. Construction costs shall be classified into appropriate plant accounts in accordance with the Uniform System of Accounts for water utilities prescribed by the Commission.

8. Breathitt District shall file a copy of the “as-built” drawings and a certified statement from the engineer that the construction has been satisfactorily completed in accordance with the contract plans and specifications within 60 days of substantial completion of the construction certified herein.

9. Breathitt District shall require the construction to be inspected under the general supervision of a professional engineer with a Kentucky registration in civil or mechanical engineering to ensure that the construction work is done in accordance with the contract drawings and specifications and in conformance with the best practices of the construction trades involved in the project.

10. Breathitt District shall notify the Commission in writing one week prior to the actual start of construction and at the 50 percent completion point.

11. Any documents filed in the future pursuant to ordering paragraphs 5, 6, 7, 8, and 10 of this Order shall reference this case number and shall be retained in the utility’s post-case correspondence file.

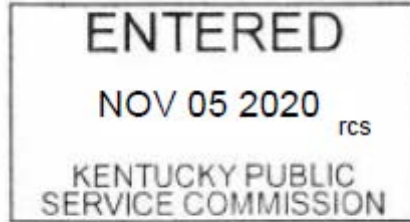
12. The Executive Director is delegated authority to grant reasonable extensions of time for filing of any documents required by this Order upon Breathitt District’s showing of good cause for such extension.

13. Breathitt District shall file for an adjustment in its base rates or file an alternative rate filing within one year of the date of entry of this Order.

Nothing contained herein shall be deemed a warranty of the Commonwealth of Kentucky, or any agency thereof, of the financing, herein approved.



By the Commission



ATTEST:

  
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Deputy Executive Director

Case No. 2020-00218

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