

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF MCCREARY)	
COUNTY WATER DISTRICT FOR)	
AUTHORIZATION TO ENTER AN ASSISTANCE)	
AGREEMENT WITH THE KENTUCKY)	
INFRASTRUCTURE AUTHORITY TO BORROW)	CASE NO.
\$270,000 TO FINANCE THE CONSTRUCTION OF)	2021-00452
THE CATRON/NEEDLE ROAD WATER LINE)	
PROJECT AND A DECLARATION THAT)	
PROJECT DOES NOT REQUIRE A CERTIFICATE)	
OF PUBLIC CONVENIENCE AND NECESSITY)	

ORDER

On December 14, 2021, McCreary County Water District (McCreary District) filed an application, pursuant to KRS 278.020, KRS 278.300 and 807 KAR 5:001, Section 15, for a Certificate of Public Convenience and Necessity (CPCN) authorizing it to construct an 8,100-linear foot (LF) water main extension or a declaration that no CPCN would be required as well as an Order approving financing in an amount not to exceed \$270,000. No party sought intervention in this matter. McCreary District has responded to one request for information from Commission Staff. The record is complete, and this matter is before the Commission on the evidentiary record.

BACKGROUND

McCreary District, a water district organized under KRS Chapter 74, provides retail water service to approximately 5,662 residential customers, and 253 industrial and

commercial customers in McCreary County¹ as well as the United States Penitentiary, which is located in Pine Knot, Kentucky. McCreary District also has contracts to provide wholesale water service to Whitley County Water District and the city of Oneida, Tennessee. It has a serviceable population of 6,620 households and approximately 16,067 persons.²

WATER LOSS

Pursuant to 807 KAR 5:066, Section (6)3, water loss is limited to 15.00 percent for ratemaking purposes. The Commission Staff notes that McCreary District reported a water loss of 13.53 percent in its 2020 Annual Report.³ At a 13.53 percent water loss, the annual cost of water loss to McCreary District is \$58,810.⁴

THE PROPOSED PROJECT

McCreary District’s proposed project is an extension of an existing waterline and includes the installation of approximately 8,100 LF of 3-inch polyvinyl chloride (PVC) waterline, 205 LF of 3/4-inch high-density polyethylene (HDPE) service line, one pressure

¹ *Annual Report of McCreary County Water District to the Public Service Commission for the Year Ending December 31, 2020* (2020 Annual Report) at 12, 49.

² Application at 3.

³ 2020 Annual Report at 57.

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	Electricity	Chemicals	Total
Reported Costs of Water Production	302,100	132,564	434,664
Multiplied by: Water Loss	13.53%	13.53%	13.53%
Total Cost of Water Loss	\$ 40,874	\$ 17,936	\$ 58,810

reducing valve vault, one flushing hydrant and related appurtenances.⁵ The proposed water line will provide water service to nine households in an unserved area of McCreary County, Kentucky.⁶

The estimated total cost of McCreary District's proposed construction project was bid at \$165,363.⁷ McCreary District intends to finance the \$165,363 construction project through the issuance of a \$270,000 loan from the Kentucky Infrastructure Authority (KIA) that will mature over a term not to exceed 30 years and with an interest rate of 0.25 percent per annum.⁸ Interest on the proposed loan will accrue from the time that McCreary District begins drawing funds from KIA. The proposed loan will be secured by a pledge of McCreary District's revenues. KIA has agreed to forgive approximately \$135,000 of the principal amount upon release of liens on all contracts for construction of the proposed water main extension and disbursement of the final draw request on assistance funds. A loan servicing fee of 0.25 percent of the outstanding loan balance will also be assessed semi-annually.⁹

McCreary District's financing through KIA requires that McCreary District either obtain a CPCN for the proposed water main extension or obtain a declaratory order that the proposed extension does not require a CPCN. Hence, the financing approval is

⁵ Application at 3. McCreary District explains that the proposed project is registered in the Kentucky Water Resource Information System (WRIS) as Project WX21147013. The project described on WRIS also includes an additional water main extension of 3,100 LF of 3-inch water main and a water main replacement of 6,000 LF of 2-inch water main with a 4-inch water main. These additional items will be constructed only if proceeds remain from the proposed assistance agreement after the extension along Catron-Needle Road is completed.

⁶ *Id.*

⁷ *Id.* at 4.

⁸ *Id.* at 4–5.

⁹ *Id.* at 5.

dependent on McCreary District obtaining a CPCN or a declaratory order that the CPCN is not required for that project.

LEGAL STANDARD

The Commission's standard of review for 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). To obtain a CPCN, a utility must demonstrate a need for such facilities and an absence of wasteful duplication.¹⁰

"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.¹¹

"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".¹²

To demonstrate that a proposed facility does not result in wasteful duplication, we have held that the applicant must demonstrate that a thorough review of all reasonable

¹⁰ *Kentucky Utilities Co. v. Public Service Comm'n*, 252 S.W.2d 885 (Ky. 1952).

¹¹ *Id.* at 890.

¹² *Id.*

alternatives has been performed.¹³ Selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.¹⁴ All relevant factors must be balanced.¹⁵

The exception requirements to a CPCN for a water district are set out in KRS 278.020(1)(a)(3):

A water district created under KRS Chapter 74 or a water association formed under KRS Chapter 273 that undertakes a waterline extension or improvement project if the water district or water association is a Class A or B utility as defined in the uniform system of accounts established by the commission according to KRS 278.220 and:

- a. The water line extension or improvement project will not cost more than five hundred thousand dollars (\$500,000); or
- b. The water district or water association will not, as a result of the water line extension or improvement project, incur obligations requiring commission approval as required by KRS 278.300.

In either case, the water district or water association shall not, as a result of the water line extension or improvement project, increase rates to its customers;

until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.

KRS 278.300 requires Commission authorization before a utility may “issue any securities or evidence of indebtedness, or assume any obligation or liability in respect to

¹³ 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).

¹⁴ See *Kentucky Utilities Co. v. Public Service Comm’n*, 390 S.W.2d 168, 175 (Ky. 1965).

¹⁵ 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 at 6,18.

the securities or evidence of indebtedness of any other person.”¹⁶ KRS 278.300(3) establishes the legal standard and clarifies the scope of Commission review, stating:

The Commission shall not approve any issue or assumption unless, after investigation of the purposes and uses of the proposed issue and proceeds thereof, or of the proposed assumption of obligation or liability, the commission finds that the issue or assumption is for some lawful object within the corporate purposes of the utility, is necessary or appropriate for or consistent with the proper performance by the utility of its service to the public and will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purpose.

DISCUSSION

McCreary District maintained that the proposed project meets the requirements necessary for the Commission to grant a declaratory order exempting McCreary District from the CPCN requirement. Specifically, McCreary District was created pursuant to KRS Chapter 74 in November 1962,¹⁷ and had \$3,781,410 in annual revenue in 2020.¹⁸ Thus, McCreary District is a Class A utility, having more than \$750,000 in annual water revenue.¹⁹ Further, the proposed project is an extension of an existing water line and, at a total cost of approximately \$270,000,²⁰ is less than the \$500,000 cap that KRS 278.020(1)(a)(3)(a) imposes for the CPCN exception. McCreary District also stated that the debt service requirements associated with the proposed project should not

¹⁶ KRS 278.300(1).

¹⁷ 2020 Annual Report at 8.

¹⁸ *Id.* at 20.

¹⁹ *National Association of Regulatory Utility Commissioners Uniform System of Accounts for Class A/B Water Companies* (1996) (as modified and adopted by the Public Service Commission in 2002) at 14.

²⁰ Application at 5, paragraph 17.

significantly impact the utility's water operations' financial position.²¹ McCreary District anticipates that the annual cost for the operation of the proposed water main extension will be less than \$500.²²

FINDINGS

Having considered the application and being otherwise sufficiently advised, the Commission finds that the proposed construction does not require a CPCN. In accordance with KRS 278.020(1)(a)(3), McCreary District is exempt from needing a CPCN for the proposed project because the District is a Class A utility created under KRS Chapter 74,²³ the proposed project is a waterline extension and improvement project costing less than \$500,000,²⁴ and the utility will not raise its rates as a result of this project.²⁵ Additionally, the Commission finds the proposed KIA loan is for lawful objects within the corporate purposes of McCreary District; is necessary and appropriate for and consistent with the proper performance by the utility of its service to the public; will not impair its ability to perform that service; is reasonable, necessary, and appropriate for such purposes; and should be approved.

McCreary District satisfied the legal standard for Commission approval of the financing. McCreary District's lawful purpose is to provide safe, adequate, and reliable service to the public. The financing will enable McCreary District to construct the

²¹ Application at 7–8.

²² *Id.* at 5 and Exhibit 14.

²³ *Id.*, Exhibit 1.

²⁴ *Id.*, Exhibit 13.

²⁵ McCreary District's Responses to Commission Staff's First Request for Information (filed Jan. 7, 2022), Item 2.

proposed project, which, as discussed above, is necessary to provide water service to the public, including a number of customers who were previously unserved. This is consistent with McCreary District's lawful purpose.

Within ten days of the execution of the new KIA loan documents, McCreary District should file with the Commission an electronic version of the loan documents. The Commission directs McCreary District to the Commission's July 22, 2021, Order in Case No. 2020-00085 regarding filings with the Commission.²⁶ The proceeds from the proposed loan should be used only for the lawful purposes set out in McCreary District's application. The terms and conditions of the new KIA loan should be consistent with loan documents as described in McCreary District's application.

IT IS THEREFORE ORDERED that:

1. McCreary District's request for a declaration that no CPCN is required for the proposed project is granted.
2. McCreary District's proposed plan of financing is approved.
3. McCreary District is authorized to execute the loan agreement with KIA and, under the terms of that Agreement, to borrow from KIA an amount not to exceed \$270,000, said amount to be repaid over a period not to exceed 30 years with an interest rate of 0.25 percent per annum.
4. The proceeds from the loan agreement shall be used only for the purposes specified in McCreary District's application.

²⁶ Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID 19* (Ky. PSC July 22, 2021), Order (in which the Commission ordered that for case filings made on and after March 16, 2020, filers are NOT required to file the original physical copies of the filings required by 807 KAR 5:001, Section 8).

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

6. Notwithstanding ordering paragraphs 4 and 5, if surplus funds remain after the approved construction has been completed, McCreary District may use such surplus to construct additional lines as registered in the WRIS as Project WX21147013, so long as it will not result in a change in McCreary District's rates for service. McCreary District shall provide written notice of this additional construction in accordance with 807 KAR 5:069, Section 4.

7. McCreary 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. McCreary 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. McCreary 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. McCreary District shall notify the Commission in writing one week before the actual start of construction and at the 50 percent completion point.

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

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

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By the Commission

ENTERED
FEB 01 2022 rCS
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


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Case No. 2021-00452

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