

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BATH COUNTY)	
WATER DISTRICT FOR A CERTIFICATE OF)	CASE NO.
PUBLIC CONVENIENCE AND NECESSITY TO)	2023-00097
CONSTRUCT AND FINANCE IMPROVEMENT)	
PROJECTS PURSUANT TO 278.020 AND 278.300)	

ORDER

On March 28, 2023, Bath County Water District (Bath District) tendered an application pursuant to KRS 278.020, KRS 278.300, and 807 KAR 5:001, Section 15, seeking financing approval and Certificates of Public Convenience and Necessity (CPCN) for improvements to two pump stations and the rehabilitation of six water storage tanks.¹ The application was initially found deficient, and Bath District cured the deficiencies on April 5, 2023. No party requested intervention in this proceeding. Bath District responded to two rounds of discovery. This matter now stands submitted for decision by the Commission.

BACKGROUND

Bath District is a water district organized under KRS Chapter 74² that provides retail water service to approximately 4,044 customers.³ As of December 21, 2021, Bath

¹ Application at 2.

² Application at 2.

³ *Annual Report of Bath District to the Public Service Commission for the year ending December 31, 2021* (filed on Aug. 25, 2022) (2021 Annual Report) at 49.

District's plant in service was \$17,455,179.00, and its accumulated depreciation was \$7,550,313.00.⁴

Tank Rehabilitation Project

The first project for which Bath District requests a CPCN is a project to rehabilitate the following six water storage tanks: Salt Lick Tank, Perry Road Tank, Ore Mines Tank, Means Tank, Olympia Tank, and Owingsville Tank. Bath District provided copies of tank inspection reports for all six tanks.⁵ The inspections reports stated that four of the tanks would need repairs completed within the next three years or sooner and that the Salt Lick Tank would need the most extensive repairs.⁶ The reports also indicated that the Means Tank and the Olympia Tank were in excellent condition but recommended minor work to be completed within five years.⁷ Bath District indicated that it was proposing to complete work based on those inspection reports for each of the six tanks.

Bath District stated that it considered three options to address the issues raised by the inspection reports: leaving the tanks as they are, rehabilitating the tanks, or replacing and rebuilding the tanks with new tanks.⁸ Bath District stated that its consulting engineer thought that performing the rehabilitation work was the most practical and cost-effective option because the inspection reports indicated that the structural integrity of the tanks was good and it was apparent that rehabilitation would be less expensive than

⁴ 2021 Annual Report at 24–25.

⁵ Bath District Tank Inspection Report (filed on Apr. 5, 2023).

⁶ Bath District Tank Inspection Report (filed on Apr. 5, 2023).

⁷ Bath District Tank Inspection Report (filed on Apr. 5, 2023).

⁸ Bath Districts Response to Commission Staff's First Request for Information (Staffs First Request) (filed May 12, 2023), Item 9.

constructing new tanks.⁹ Bath District also stated that it does not currently have any storage capacity issues at this time.¹⁰

Bath District estimated that it would approximately cost between \$400,000 and \$500,000 per tank to replace five of the tanks, and that it would cost over \$1 million to replace the Salt Lick Tank, and that the useful lives of the new tanks would be 37.5 years for each tank.¹¹ Conversely, Bath District estimated that the total cost to rehabilitate all the tanks would be approximately \$400,000,¹² and that rehabilitation would add about 20 years to the useful lives of the existing tanks.¹³ Bath District indicated that there would only be negligible differences in operation and maintenance (O&M) expense between replacing and rehabilitating the tanks.¹⁴

Pump Stations

The second project for which Bath District requests a CPCN is a project to replace the Ore Mines Pump Station and rehabilitate the Midland Pump Station.¹⁵ Bath District indicated pumps, valves, and pipes at the Ore Mines Pump Station and Midland Pump Station were installed in 2005 and 1998, respectively, with an expected useful life of

⁹ Bath Districts Response to Commission Staff's Second Request for Information (Staff's Second Request) (filed May 31, 2023), Item 9.

¹⁰ Bath District's Response to Staff's First Request, Item 3.

¹¹ Bath District Response to Commission Staff's Second Request for Information (Staff's Second Request) (filed May 31, 2023), Item 3(b).

¹² Application, Exhibit B, Bid Tabulation, at unnumbered page 2.

¹³ Bath District's Response to Staff's First Request, Item 12.

¹⁴ Bath District's Response to Staff's Second Request, Item 3(b).

¹⁵ Application, Exhibit C at 1.

20 years.¹⁶ Bath District stated that the two pump stations are pumping water 22 to 24 hours per day, which does not allow time for preventative maintenance. Bath District further explained that demand has increased in the areas served by the pump stations, putting a severe strain on the ability of the stations to deliver the water needed by the customer base.¹⁷ Bath District explained that the Ore Mines Pump Station is particularly critical, and that approximately 4,000 customers within the district and two wholesale customers would be out of water if there was a failure at that station.¹⁸

Bath District stated that with the proposed projects, the Ore Mines Pump Station will increase from pumping 1,200 gallons per minute to 1,500 gallons per minute and the Midland Pump Station will increase from pumping 1,000 gallons per minute to 1,500 gallons per minute.¹⁹ Bath District explained that this additional capacity will permit the stations to operate fewer hours per day and will allow them to serve an increase in demand.²⁰ In addition to the increased pumping capacity, Bath District stated that once the pump-station projects are complete, both stations will have redundancies in the number of pumps, controls, and valves that permit maintenance to be completed while the other pump in the station is still operational.²¹

¹⁶ Bath District's Response to Staff's First Request, Item 11.

¹⁷ Bath District's Response to Deficiency Letter, Statement of Facts In support of Project.

¹⁸ Bath District's Response to Deficiency Letter, Statement of Facts In support of Project.

¹⁹ Bath District's Response to Staff's First Request, Item 3.

²⁰ Bath District's Response to Staff's First Request, Item 4; see *also* Bath District's Response to Staff's Second Request, Item 4 (indicating that the upgraded Midland Pump Station will only have to operate 12 to 16 hours a day at current demand).

²¹ Bath District's Response to Staff's First Request, Item 6.

Bath District stated that it considered three options to address the issues with the Midland Pump Station.²² Bath District first considered whether the Morehead Utility Plant's new regional water treatment plant could be used to replace the pumping station.²³ However, upon hydraulically reviewing the possibility, it was determined that it would not be possible to achieve the necessary flows and pressures.²⁴

Bath District indicated that it next considered the complete replacement of the Midland Pump Station along the lines of the project proposed for the Ore Mines Pump Station.²⁵ Bath District estimated cost of replacing the pump station to be \$500,000.²⁶ However, Bath District stated that constructing a new building for the pumping station was not necessary, because the building is in satisfactory condition with only minor repairs needed.²⁷ Thus, Bath District stated that replacement of the Midland Pump Station was not necessary and would not be cost-effective as compared to its proposal to rehabilitate the pumping station.

The option that Bath District proposes in this matter to address the Midland Pump Station is rehabilitating the pump station, which includes upgrading the pumps, controls, and piping, and making minor upgrades to the building such as replacing its roof to extend its life. Bath District explained that this option does require the use of a temporary pump during the rehabilitation but extends the life of the pumping station and increases the

²² Bath District's Response to Staff's First Request, Item 10.

²³ Bath District's Response to Staff's First Request, Item 10.

²⁴ Bath District's Response to Staff's First Request, Item 10.

²⁵ Bath District's Response to Staff's First Request, Item 10.

²⁶ Bath District's Response to Staff's Second Request, Item 4.

²⁷ Bath District's Response to Staff's First Request, Item 10.

pumping capacity of the station. Further, the current bid for rehabilitating the pump station is \$284,678.²⁸

Bath District indicated that it only considered two options with respect to the Ores Mines Pump Station: either doing nothing or replacing the station in its entirety.²⁹ Bath District stated that doing nothing was not an option, because the piping is undersized for current flow rates and the pump station is currently required to operate 24 hours per day during peak operating times, which limits when necessary maintenance and repairs can be completed.

Bath District determined that it was necessary to fully replace the station as a result of the undersized piping and the station being a chlorine booster point. Bath District stated that due to the corrosive nature of the chlorine the equipment its estimates that the equipment and structure are near the end of their useful life.³⁰ In response to request for information, Bath District further explained that rehabilitation along the lines of the project proposed for the Midland Pump Station would not work for the Ore Mines Pump Station, because the chlorine has resulted in severe deterioration of the building structure and the piping inside the structure is not large enough to pump at required flow rate or to pump any additional water in the future.³¹ Bath District indicated that it based its analysis on “hydraulics, visual inspection, age of the equipment/structure, known deficiencies, criticality, energy efficiency, and regulatory concerns.”³²

²⁹ Bath District’s Response to Staff’s First Request, Item 10.

²⁹ Bath District’s Response to Staff’s First Request, Item 10.

³⁰ Bath District’s Response to Staff’s First Request, Item 10.

³¹ Bath District’s Response to Staff’s Second Request, Item 4.

³³ Bath District’s Response to Staff’s First Request, Item 11.

Bath District estimated that replacement of the Ore Mines Pump Station will extend the useful life of the equipment from 2 to 20 years, and the building from zero to 37.5 years.³³ Regarding the Midland Pump Station, Bath District estimated that rehabilitation would result in the installation of equipment with a useful life of about 20 years as compared the current equipment, which is currently five years beyond its estimated useful life.³⁴

Bid Review

Bath District stated that in reviewing any bids received it would consider the qualifications and experience of the bidder, subcontractors, and suppliers,³⁵ and that the consulting engineers and Bath District would check references and will consider their past experiences with the contractor.³⁶ Bath District stated that if it has had a bad experience or receives a bad reference for the low bidder, it might disqualify that contractor.³⁷ Bath District will also take into consideration the bonding ability of the contractor.³⁸

Financing

Bath District proposes to fund the projects through a 20-year loan from the Kentucky Infrastructure Authority (KIA) Fund B in the amount of \$640,469.00 with a 1.25 percent interest rate and a contribution of \$851,008 in Cleaner Water grant funds.³⁹

³³ Bath District's Response to Staff's First Request, Item 11.

³⁴ Application at 2.

³⁵ Bath District's Response to Staff's First Request, Item 1.

³⁶ Bath District's Response to Staff's First Request, Item 1.

³⁷ Bath District's Response to Staff's First Request, Item 1.

³⁸ Bath District's Response to Staff's First Request, Item 1.

³⁹ Bath District's Deficiency Response, Attachment 5 (filed on Apr. 5, 2023).

Bath District stated that the debt associated with these projects was considered in its most recent Alternative Rate Filing,⁴⁰ and therefore, it is not seeking a rate increase as part of this application.⁴¹

LEGAL STANDARD

The commission's standard of review regarding 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.⁴² To obtain a CPCN, the utility must demonstrate a need for such facilities and an absence of wasteful duplication.⁴³

"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.⁴⁴

"Wasteful duplication" is defined as "an excess of capacity over need" and "an excessive investment in relation to productivity or efficiency, and an unnecessary

⁴⁰ Case No. 2022-00404 *Electronic Application of Bath County Water District for a Rate Adjustment Pursuant to 807 KAR 5:076* (filed on Dec. 15, 2022).

⁴¹ Bath District's Response to Staff's First Request, Item 8.

⁴² KRS 278.020(1). Although the statute exempts certain types of projects from the requirement to obtain a CPCN, the exemptions are not applicable.

⁴³ *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 252 S.W.2d 885 (Ky. 1952).

⁴⁴ *Kentucky Utilities Co.*, 252 S.W.2d 885, 890.

multiplicity of physical properties.”⁴⁵ 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.⁴⁶ Although cost is a factor, selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.⁴⁷ All relevant factors must be balanced.⁴⁸

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 the securities or evidence of indebtedness of any other person.”⁴⁹ 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.

⁴⁵ Kentucky Utilities Co., 252 S.W.2d 885, 890.

⁴⁶ 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.

⁴⁷ 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), Order at 6.

⁴⁸ Case No. 2005-00089, Aug. 19, 2005 Order at 6.

⁴⁹ KRS 278.300(1).

DISCUSSION AND FINDINGS

Having considered the application and all evidence in the record, the Commission finds that the CPCNs should be granted. As noted above, the water storage tanks were reviewed by an independent contractor in April 2021, who recommended that certain repairs, consistent with the proposed the rehabilitation work, be completed on the six tanks at issue within three to five years. Those reports are specific to each tank and discuss in detail the work recommended based on the condition of each tank. Further, Bath District worked with a consulting engineer to develop the tank rehabilitation projects to address the issues raised in the inspection reports. Thus, the Commission finds that there is a need for the tank rehabilitation projects.

Similarly, the evidence indicates that the relevant equipment at the Ore Mines Pump Station and the Midland Pump Station has reached or is nearing the end of its useful life based on expected years of service developed by National Association of Regulatory Utility Commissioners (NARUC).⁵⁰ Bath District's consulting engineer, who responded to all requests for information on behalf of Bath District, also explained, as discussed above, that the pumps and other equipment are insufficient to meet the current demand on the portions of the system served by the stations; therefore, the pumps are running 22 to 24 hours a day, and the available time to complete repairs and general maintenance without interrupting the water supply is limited. Bath District's consulting engineer explained that the project will decrease the run time of each pump, add in redundancies, and increase the gallons per minute each station can move. As stated

⁵⁰ See Bath District's Response to Staff's Second Request, Item 11 (in which Bath District's engineering consultant indicated that the date the equipment was installed, and the expected useful life based on NARUC standards).

above, the Ore Mines Pump Station is also a chlorine booster station, which has caused significant corrosion to the building and equipment. Without replacing the Ore Mines Pump Station and rehabilitating the Midland Pump Station, Bath District risks a failure of the pump stations that could result in a significant loss of service. Thus, the Commission finds that the proposed pump station project is needed.

Bath District also established that the projects will not result in wasteful duplication. Bath District considered three alternatives for the water storage tanks, doing nothing, rehabilitation the tanks, or replacing the tanks. As discussed above, the rehabilitation work on the storage tanks is necessary so doing nothing to maintain the tanks would not be prudent. Bath District considered replacing the tanks, but the consulting engineer estimated that replacing a single tank would cost the same or more than all the proposed rehabilitation work with negligible differences in O&M expense.⁵¹ Further, the evidence indicates that fully replacing or expanding the tanks is not necessary such that additional cost would not be justified, because the current tanks have not reached the end of their expected useful lives, the existing tanks are structurally sound, and Bath District does not have any storage capacity issues. Thus, the Commission finds that Bath District established that its tank rehabilitation project will not result in wasteful duplication, and therefore, that a CPCN should be granted for that project.

Bath District discussed two alternatives to replacing the Ore Mines Pump Station: doing nothing and rehabilitating the station. However, as discussed above, the equipment

⁵¹ See Bath District's Response to Commission Staff's Second Request, Item 3(b) (indicating the estimated cost of the tank replacements and that there would only be negligible differences in O&M expense); Application, Exhibit B, Bid Tabulation at unnumbered page 2 (indicating the estimated cost of the proposed rehabilitation projects).

at both pump stations at issue in this case has or is reaching the end of its useful life and additional capacity is needed at the pump stations. As such, doing nothing was not an option as it would pose a significant risk of loss of service. Further, while rehabilitation of the station along the lines of that proposed for the Midland Pump Station would potentially be cheaper, Bath District's consulting engineer credibly explained that rehabilitation would not be feasible in the case of the Ore Mines Pump Station, because the structure that houses the equipment has been significantly damaged by chlorine and the piping at the station was insufficient to handle the capacity needed. Thus, the Commission finds that Bath District established that its replacement of the Ore Mines Pump Station will not result in wasteful duplication, and, therefore, that a CPCN should be granted for that project.

Regarding the Midland Pump Station, Bath District considered three options, using the Morehead Utility Plant Board's new regional water treatment plant, replacing the pumping station at a new location, or rehabilitating the station by upgrading pumps, controls, piping, and the building. Upon consulting with the Morehead Utility Plant Board, Bath District determined that it was not hydraulically feasible to use the new water treatment plant. Further, replacing the pump station would have been overly costly as the structure was still sound and replacing it would require acquiring new property. The estimated capital costs of replacing the station were \$500,000 as compared to \$284,678 for rehabilitating the station, and the operating and maintenance costs would be similar to rehabilitation. Thus, Commission finds that Bath District established that its rehabilitation of the Midland Pump Station will not result in wasteful duplication, and, therefore, that a CPCN should be granted for that project.

Bath District is proposing to finance the projects discussed above with a 20 year loan issued by KIA in the amount of \$640,469 with an annual interest rate of 1.25 percent, and a \$851,008 Cleaner Water Grant, and requests approval of the proposed financing pursuant to KRS 278.300(1). The Commission finds that the financing is necessary for the completion of the projects discussed above and will not impair Bath District's ability to provide service. In fact, as noted above, the Commission finds that the projects at issue are necessary and will not result in wasteful duplication. Further, as the loan is being issued by KIA, the rates and terms are extremely favorable. Furthermore, Bath District will not need to increase its rates as a result of the financing as it was already accounted for in Bath District's most recent Alternative Rate Filing.⁵² Thus, the Commission finds that the financing for which Bath District requests approval is for a lawful object within the corporate purposes of Bath District's utility operations, is necessary and appropriate for and consistent with the proper performance of Bath District's service to the public, will not impair Bath District's ability to perform that service, and is reasonably necessary and appropriate for such purposes, and, therefore, the Commission finds that approval of the financing should be granted.

IT IS THEREFORE ORDERED that:

1. Bath District is granted a CPCN to rehabilitate the six water storage tanks, to rehabilitate the Midland Pump Station, and to replace the Ore Mines Pump Station as set forth in its application.

⁵² Case No. 2022-00404, *Electronic Application of Bath County Water District for a Rate Adjustment Pursuant to 807 KAR 5:076* (filed on Dec. 15, 2022).

2. Bath District shall immediately notify the Commission upon knowledge of any material changes to the projects, including but not limited to increase in cost and any significant delays.

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

4. Bath District shall file with the Commission documentation of the total costs of the projects, including the cost of construction and all other capitalized costs (e.g., engineering, legal, administrative, etc.) within 60 days of the date that construction authorized under this CPCN 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.

5. Bath District shall file a copy of the as-built drawings and a certified statement that the construction has been satisfactorily completed in accordance with the contract plans and specifications within 60 days of the substantial completion of the construction certificated herein.

6. Bath District is authorized to issue the evidences of debt requested subject to the conditions discussed herein.

7. The proceeds from the issue of the evidences of debt authorized shall be used only for the lawful purposes set out in the application.

8. Bath District shall only execute the KIA loan documents to the extent their terms and conditions are consistent with the loan described in its application, except as otherwise authorized herein.

9. Bath District shall file the KIA loan documents in this matter within ten days of the executing them.

10. Any documents filed in the future pursuant to ordering paragraphs 4, 5, and 9 shall reference this case number and shall be retained in the post case correspondence file.

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

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

Nothing contained herein shall be deemed a warranty or finding of value of securities or financing authorized herein on the part of the Commonwealth of Kentucky or any agency thereof.

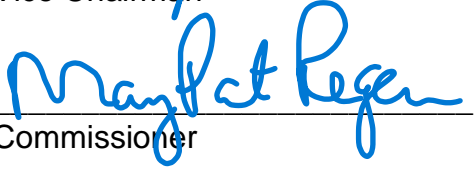
PUBLIC SERVICE COMMISSION



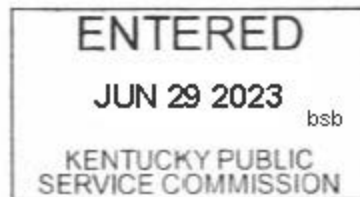
Chairman



Vice Chairman



Commissioner



ATTEST:



Executive Director

*Bath County Water District
21 Church Street
P. O. Box 369
Salt Lick, KY 40371

*Attorney Earl Rogers III
Campbell Rogers & Hill, PLLC
Campbell & Rogers
154 Flemingsburg Road
Morehead, KENTUCKY 40351

*Holly Nicholas
Kentucky Engineering Group, PLLC
161 N Locust Street
Versailles, KENTUCKY 40383

*Sarah Price
Bath County Water District
21 Church Street
P. O. Box 369
Salt Lick, KY 40371