

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF HARDIN)	CASE NO.
COUNTY WATER DISTRICT NO. 1 FOR)	2023-00143
TRANSFER AND ACQUISITION)	

ORDER

On May 31, 2023, Hardin County Water District No. 1 (Hardin District No. 1) and the city of West Point (West Point) (collectively, Joint Applicants) filed an amended joint application, which replaced the first unnumbered section of the original joint application to read as follows:

Hardin County Water District No. 1 ("Hardin District") and the City of West Point ("City") (collectively, "Joint Applicants") jointly applies to the Public Service Commission ("Commission") for an order, pursuant to KRS 278.020 (6), (7), and (10) approving the acquisition of ownership, transfer, and control to Hardin District of the City's water and wastewater facilities, assets, and accounts. *If the Commission determines that the City is not a "utility" subject to the Commission's jurisdiction, the Joint Applicants request Commission approval under KRS 278.020(1) in the form of a Certificate of Public Convenience and Necessity.* The proposed acquisition and transfer of ownership and control will occur, subject to the approval of the Commission and other regulatory agencies, under the terms of the accompanying, Water System and Wastewater System Acquisition Agreement (the "Agreement") dated April 25, 2023, by and between the Hardin District and the City, attached hereto as Exhibit A. (Emphasis added)¹

¹ Joint Application (filed May 5, 2023) at 1.

Joint Applicants also stressed the importance of Commission approval in Case 2023-00144,² in which Hardin District No. 1 is seeking approval of a perpetual line of credit to be used for short-term financing needs, including certain costs involved in this application. Hardin District No. 1 states in the amended joint application that it lacks the financial wherewithal to complete the proposed acquisition until and unless the Commission approves the line of credit described in case 2023-00144.

LEGAL STANDARD

Pursuant to 807 KAR 5:001E Section 4(5), "Upon motion of a party and for good cause shown, the commission shall allow a[n] application . . . to be amended Unless the commission orders otherwise, the amendment shall not relate back to the date of the original paper."

KRS 278.020(6) and 278.020(7) require prior Commission approval of the transfer or control of any "utility."

The Commission has held that a utility purchasing a non-jurisdictional system must obtain a CPCN pursuant to KRS 278.020(1)(a) before it commences operating the non-jurisdictional utility.³ KRS 278.020(1)(a) states, in relevant part, that [n]o person . . . shall commence providing utility service to or for the public or begin the construction of any

² Case No. 2023-00144, *Electronic Application of Hardin County Water District No. 1 for Approval of Indebtedness Pursuant to KRS 278.300(1) and KRS 278.300(8) and Related Sections Authorizing* (filed May 4, 2023).

³ Case No. 2020-00028 *Electronic Proposed Acquisition by Bluegrass Water Utility Operating Company, LLC of Wastewater System Facilities and Subsequent Tariffed Service to Users Presently Served by Those Facilities* (Ky. PSC Jun. 19, 2020; Case No. 2021-00265, *Electronic Proposed Acquisition of Wastewater System Facilities by Bluegrass Water Utility Operating Company, LLC* (Ky. PSC Feb. 24, 2022).

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

DISCUSSION

Joint Applicants have amended their application to include Commission review pursuant to KRS 278.020(1). West Point is a municipal system that is not considered a “utility” under the Commission’s jurisdiction. Therefore, according to recent Commission precedent,⁴ the Joint Applicants have correctly added the request for approval pursuant to KRS 278.020(1)(a) before it commences operating the non-jurisdictional utility.

Joint Applicants stressed the importance of the approval of the line of credit in Case No. 2023-00144 in order to move forward with the proposed acquisition. However, Joint Applicants appear to have included this reminder as an attempt to facilitate the timing between the proposed line of credit and proposed acquisition, and did not state expressly that the acquisition approval request is conditioned on Hardin District No. 1 receiving approval of the line of credit in Case No. 2023-00144.

Having reviewed the Joint Applicants’ amended application and being otherwise sufficiently advised, the Commission finds that the Joint Applicants have established good cause to permit them to amend their original application, and that the amendment should not relate back to the May 5, 2023 filing date of the application.

Pursuant to KRS 278.020(7), the Commission is required to adjudicate such applications within 60 days of filing, unless good cause exists to continue the application

⁴ Case No. 2020-00028, *Electronic Proposed Acquisition by Bluegrass Water Utility Operating Company, LLC of Wastewater System Facilities and Subsequent Tariffed Service to Users Presently Served by Those Facilities* (Ky. PSC Jun. 19, 2020); Case No. 2021-00265, *Electronic Proposed Acquisition of Wastewater System Facilities by Bluegrass Water Utility Operating Company, LLC* (Ky. PSC Feb. 24, 2022).

for an additional 60 days. By Order entered May 25, 2023, the Commission found that the investigation could not be completed within 60 days of the filing date of the original joint application and continued the matter to September 2, 2023. The Commission finds that the investigation cannot be completed by July 30, 2023, which is 60 days after the filing of the amended joint application, and that this matter should be continued for an additional 60 days from July 30, 2023, to September 28, 2023. However, the Commission shall use its best efforts to render a decision as soon as possible after September 2, 2023, which was the original statutory deadline. The Commission also finds that the existing procedural schedule should be amended as provided in the attached Appendix.

IT IS THEREFORE ORDERED that:

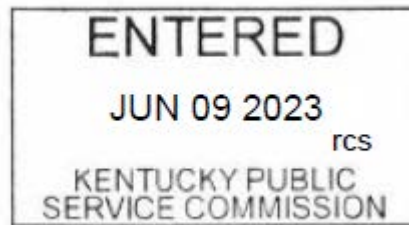
1. Joint Applicants' amended joint application is deemed filed as of May 31, 2023.
2. Joint Applicants' request for approval of the proposed acquisition of ownership and control is continued for an additional 60 days from July 30, 2023, to September 28, 2023, pursuant to KRS 278.020(7).
3. The procedural schedule contained in the Commission's May 25, 2023 Order is amended as provided in the attached Appendix.
4. Nothing contained herein shall prevent the Commission from entering further Orders in this matter.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner



ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2023-00143 DATED JUN 09 2023

Joint Applicants shall file responses to initial requests for
information no later than..... 06/12/2023

All supplemental requests for information to Joint Applicants
shall be filed no later than 06/30/2023

Joint Applicants shall file responses to supplemental requests
for information no later than 07/18/2023

Last day for Parties to request a Public Hearing or submit a
request for the matter be decided based upon the written record.....08/04/2023

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