

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|                                   |   |            |
|-----------------------------------|---|------------|
| ELECTRONIC APPLICATION OF OHIO    | ) |            |
| COUNTY WATER DISTRICT FOR A       | ) | CASE NO.   |
| CERTIFICATE OF PUBLIC CONVENIENCE | ) | 2023-00192 |
| AND NECESSITY PURSUANT TO KRS     | ) |            |
| 278.020 AND 807 KAR 5:001         | ) |            |

ORDER

This matter arises from Ohio County Water District’s (Ohio District) application for a Certificate of Public Convenience and Necessity (CPCN) for a project to rehabilitate and improve its existing raw water intake facilities (Application). The Application was accepted for filing on June 9, 2023. No party requested to intervene in this matter. Ohio District responded to a request for information from Commission Staff on July 19, 2023. This matter is now before the Commission for a decision on the merits.

BACKGROUND

Ohio District is a water district organized under KRS Chapter 74 that provides retail water service to approximately 6,111 customers in Ohio County and portions of Breckinridge, Daviess, Grayson, and McLean Counties.<sup>1</sup> Ohio District had approximately \$4,656,378 in Operating Revenues and (\$204,178) in Net Income in 2022.<sup>2</sup> Ohio District’s plant in service as of December 31, 2022, was valued at \$45,608,428 and its

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<sup>1</sup> Application at 2.

<sup>2</sup> *Ohio District’s 2022 Annual Report* at 20-21 (filed June 2, 2023).

accumulated depreciation was \$18,368,430.<sup>3</sup> Ohio District's water loss in 2020, 2021, and 2022 was 13.8 percent, 22.4 percent, and 13.6 percent, respectively.<sup>4</sup> Ohio District's most recent base rate case was filed in 2020,<sup>5</sup> and it stated it has engaged the services of Kentucky Rural Water Association to prepare a Rate Study and to assist with the preparation and filing of another rate case.<sup>6</sup>

Ohio District requests a CPCN in this matter for a project to rehabilitate and improve of its existing raw water intake facilities.<sup>7</sup> The intake facilities were originally constructed in the 1960s, and the original raw water lines leading from the screening structures in the river to the main pump well were replaced in 1991.<sup>8</sup> The screens are designed to keep rocks, branches, plastic, and other debris from entering the raw water line.<sup>9</sup>

Ohio District stated that an annual inspection of the intake screens and wet well in September 2019, performed by Green River Commercial Diving discovered a significant amount of debris and large rocks in the wet well, which was indicative of a hole in the raw water line between the river and the wet well.<sup>10</sup> Green River Commercial Diving's report

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<sup>3</sup> *Ohio District's 2022 Annual Report* at 16 (filed June 2, 2023).

<sup>4</sup> *Ohio District's 2020 Annual Report* at 57-58 (filed May 27, 2023); *Ohio District's 2021 Annual Report* at 57 (filed Nov. 25, 2023); *Ohio District's 2022 Annual Report* at 57-58 (filed June 2, 2023).

<sup>5</sup> Case No. 2020-00167, *Electronic Application of Ohio County Water District for an Alternative Rate Adjustment* (filed Jun. 5, 2020).

<sup>6</sup> Ohio District's Response to Commission Staff's First Request for Information (Staff's First Request), Item 8.

<sup>7</sup> Application at 3.

<sup>8</sup> Application at 5.

<sup>9</sup> Application at 5.

<sup>10</sup> Application at 6.

indicated that they believed that there was a large hole in a portion of the raw water line that could not be visualized due to the size of the rocks in the wet well,<sup>11</sup> which were “at least 6 to 8 inches in size.”<sup>12</sup> Ohio District indicated that further investigation identified the hole in the raw water line.<sup>13</sup>

Ohio District engaged the services of J.R. Wauford & Company Consulting Engineers, Inc., of Nashville, Tennessee (Wauford) to review Ohio District’s findings and make recommendations for renovations or replacement of existing facilities.<sup>14</sup> Wauford’s preliminary engineering report stated that “[t]he presence of large rocks in the wetwell is indicative of a serious problem that may continue to worsen over time causing pump damage, pump failure, and/or loss of water supply.”<sup>15</sup> Wauford explained that a pipe failure, raw water supply line clog, or pump failure would likely occur very quickly and without advance notice, and that it would mean catastrophic failure in a relatively short time. Wauford indicated that a catastrophic failure would likely result in significant costs to Ohio District.<sup>16</sup>

Wauford provided two recommendations to address the issue with the raw water intake: (1) replace the intake facilities with a conventional concrete intake structure (the Alternative Project), or (2) renovate the existing intake facilities by constructing two new

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<sup>11</sup> See Application, Exhibit 8, Preliminary Engineering Report, Appendix, Green River Commercial Diving Inspection Report at 4.

<sup>12</sup> Application at 5–6. Photos show large rocks that appear to be about 6 or 8 inches in diameter.

<sup>13</sup> Application at 6.

<sup>14</sup> Application at 7–8.

<sup>15</sup> Application, Exhibit 8, Preliminary Engineering Report at 4.

<sup>16</sup> See Application, Exhibit 8, Preliminary Engineering Report at 4–5 (estimating \$30,000 a month just for temporary pumps but indicating that there would be other costs).

submerged screening structures, installing two new raw water supply lines, and constructing a new concrete vault set back off the river bank to serve as a wet well and as an elevated valve access platform (the Proposed Project).<sup>17</sup> As of April 2021, Wauford estimated the cost for the Alternative Project to be \$4,630,000 and the cost for the Proposed Project to be \$2,125,000.<sup>18</sup> Based on Wauford's estimates, Ohio District determined that the Proposed Project would be the most cost-effective option to resolve its issues with its raw water intake.<sup>19</sup>

Ohio District stated that it advertised the Proposed Project to solicit bids as required by KRS 424.260 on February 1, 2023. Three bids for the construction were received and ranged from \$5,237,000 to \$12,353,150.<sup>20</sup> Wauford informed Ohio District that it had successfully worked with the lowest bidder before, and therefore, recommended that Ohio District accept that bid.<sup>21</sup> Based on the higher than expected bids for construction of the Proposed Project, Ohio District now estimates that the total project cost is \$5,943,600; the cost breakdown is as follows:<sup>22</sup>

|                               |             |
|-------------------------------|-------------|
| Construction Costs            | \$5,132,000 |
| Engineering Fees:             | \$340,000   |
| Grant Administration:         | \$45,000    |
| Legal:                        | \$25,000    |
| Interest During Construction: | \$145,000   |
| Contingency (5% of Line 1):   | \$256,600   |

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<sup>17</sup> Application at 8.

<sup>18</sup> Application at 8.

<sup>19</sup> Application at 10.

<sup>20</sup> Application at 11.

<sup>21</sup> Application, Exhibit 13.

<sup>22</sup> Ohio District's Response to Staff's First Request, Item 3(a).

Total Project Cost:

\$5,943,600

Despite the increase in the cost of the Proposed Project over the April 2021 estimate, Ohio District asserted that the Proposed Project is more cost-effective than the Alternative Project. Ohio District acknowledged that they were surprised by the extent to which the bids exceeded the estimates but stated that they expected some increase in the costs from the April 2021 estimates.<sup>23</sup> A representative of Wauford explained that the increase in the bids over the estimates was likely due to overall inflation between 2021 and 2023 and supply chain issues, as well as the specialized nature of the work and limited contractor pool.<sup>24</sup> However, Wauford opined that bids for the Alternative Project would reflect a similar escalation in cost such that it now estimated that the cost of the Alternative Project would be \$13,313,900.<sup>25</sup>

Wauford estimated that certain components of the Alternative Project would have a longer useful life than components of the Proposed Project but that the annual depreciation expense for the Proposed Project would be \$110,184 as compared to \$201,572 for the Alternative Project with the updated estimates.<sup>26</sup> Wauford also indicated that the annual operation and maintenance (O&M) expense for both projects would be comparable and would primarily include electricity for the pumps and annual inspection

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<sup>23</sup> Application at 11–12.

<sup>24</sup> Ohio District's Response to Staff's First Request, Item 2.

<sup>25</sup> Ohio District's Response to Staff's Request, Item 6.

<sup>26</sup> Ohio District's Response to Staff's Request, Item 7 (providing the calculation of the depreciation expense); see *also* Ohio District's Response to Staff's Request, Item 5 (stating that Wauford estimated the useful lives of the components of the alternative project to be 100, 50, and 20 years as compared to 50 and 20 years for the Proposed Project).

costs.<sup>27</sup> Including potential financing costs and debt service coverage requirements, Wauford estimated that the Alternative Project would have an annual revenue requirement effect of \$673,101 more than the Proposed Project based on the updated estimates.<sup>28</sup>

Ohio District stated that the Proposed Project will be funded initially by a combination of grants and interim financing.<sup>29</sup> Ohio District asserted that it is the beneficiary of a \$2,000,000 Community Development Block Grant from the Commonwealth of Kentucky, Department for Local Government to the Ohio Fiscal Court.<sup>30</sup> In addition, Ohio District has applied for a federal grant of \$2,000,000, which will be granted or denied by late September or early October 2023.<sup>31</sup> Ohio District will use short-term interim financing (not exceeding twenty-three months) to pay contractors as work is done, and then will apply to the Commission for authorization to issue Bonds toward the end of the project, when costs are more readily known.<sup>32</sup>

## LEGAL STANDARD

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<sup>27</sup> Ohio District's Response to Staff's Request, Item 9.

<sup>28</sup> See *Ohio District's* Response to Staff's Request, Item 10.

<sup>29</sup> Application at 13, ¶ 33.

<sup>30</sup> Application at 13, ¶ 33.

<sup>31</sup> Application 13–14, ¶ 34.

<sup>32</sup> Application 14–15, ¶ 35-36.

The Commission's standard of review regarding a CPCN is well settled. Under KRS 278.020(1), 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. To obtain a CPCN, the utility must demonstrate a need for such facilities and an absence of wasteful duplication.<sup>33</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>34</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>35</sup> 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 alternatives has been performed.<sup>36</sup> Selection of a proposal that ultimately costs more than an alternative does not necessarily result in

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<sup>33</sup> *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 252 S.W.2d 885 (Ky. 1952).

<sup>34</sup> *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 252 S.W.2d 885, 890 (Ky. 1952).

<sup>35</sup> *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 252 S.W.2d 885, 890 (Ky. 1952).

<sup>36</sup> Case No. 2005-00142, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky* (Ky. PSC Sept. 8, 2005).

wasteful duplication.<sup>37</sup> All relevant factors must be balanced.<sup>38</sup> The statutory touchstone for ratemaking in Kentucky is the requirement that rates set by the Commission must be fair, just, and reasonable.<sup>39</sup>

## DISCUSSION

Ohio District established that there is a need for the Proposed Project. The reports of both Green River Commercial Diving and Wauford indicate that there is significant damage to the raw water intake pipes that have allowed debris and large rocks to enter the system, and those reports are supported by pictures showing significant debris in the wet well. Wauford indicated that the presence of a hole that allows large rocks to enter the system presents a risk of catastrophic failure, which could result in the loss of service and significant costs. Ohio District worked with Wauford to develop a plan to address the issue, and the Proposed Project does that by installing new raw water piping and replacing and upgrading related facilities. These renovations are necessary for Ohio District's water intake facility to continue operations without risk of failure. Thus, the Commission finds that the Proposed Project will address a need that justifies granting a CPCN for the project.

Ohio District and its engineers considered other projects and indicated that both the Alternative Project and the Proposed Project would address the issue with the existing

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<sup>37</sup> See *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 390 S.W.2d 168, 175 (Ky. 1965). See also Case No. 2005-00089, *The Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity to Construct a 138 kV Electric Transmission Line in Rowan County, Kentucky* (Ky. PSC Aug. 19, 2005).

<sup>38</sup> Case No. 2005-00089, *East Kentucky Power Cooperative, Inc.* (Ky. PSC Aug. 19, 2005), final Order at 6.

<sup>39</sup> KRS 278.190(3).



raw water intake facilities. However, Ohio District presented credible evidence that Alternative Project would cost Ohio District's customers significantly more. For instance, based on the updated capital costs and the engineer's estimated useful lives, the Alternative Project would result in annual depreciation expense that is nearly twice as much as that of the Proposed Project. Further, Ohio District's engineer estimated that the annual O&M expense for both projects would be roughly the same, which is logical given their similar functions, and therefore, the difference in depreciation expense will not likely be offset by other savings. The Alternative Project would be more cost effective based on the April 2021 estimate for that project, but the Commission agrees that the cost of that project would likely be significantly more than that estimate based inflation in the intervening period and the bids for the Proposed Project, which is less involved than the alternative. Finally, the Proposed Project was competitively bid, and Ohio District indicated that it accepted the lowest bid for the project. Thus, the Commission finds that the project for which Ohio District is requesting a CPCN will not result in wasteful duplication and that Ohio District's request for a CPCN for that project should be granted.

IT IS THEREFORE ORDERED that:

1. Ohio District is granted a CPCN for the Proposed Project as set forth in its application.
2. Ohio 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 in construction.
3. Any material deviation from the construction approved by this Order shall be undertaken only with the prior approval of the Commission.

4. Ohio 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. Ohio 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. Any documents tiled in the future pursuant to ordering paragraphs 4 and 5 shall reference this case number and shall be retained in the post case correspondence file.

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

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

PUBLIC SERVICE COMMISSION

  
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Chairman

  
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Vice Chairman

  
\_\_\_\_\_  
Commissioner

ENTERED  
JUL 31 2023  
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KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
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