

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|   |   |            |
|---|---|------------|
| ELECTRONIC APPLICATION OF HARRISON            | ) |            |
| COUNTY WATER ASSOCIATION, INC. FOR A          | ) |            |
| CERTIFICATE OF PUBLIC CONVENIENCE AND         | ) |            |
| NECESSITY FOR A SYSTEM IMPROVEMENT            | ) |            |
| AND AN ORDER APPROVING FINANCING              | ) |            |
| PURSUANT TO KRS 278.020 AND/OR 278.300,       | ) | CASE NO.   |
| OR ALTERNATIVELY A DECLARATORY ORDER          | ) | 2023-00257 |
| ESTABLISHING THAT A CERTIFICATE OF            | ) |            |
| PUBLIC CONVENIENCE AND NECESSITY IS           | ) |            |
| NOT NECESSARY PURSUANT TO 807 KAR 5:001       | ) |            |
| (15), 807 KAR 5:001 (18) AND/OR 807 KAR 5:001 | ) |            |
| (19)  | ) |            |

ORDER

On September 29, 2023,<sup>1</sup> Harrison County Water Association, Inc. (Harrison Water) filed an application for a Certificate of Public Convenience and Necessity (CPCN) for a system improvement and an order approving financing pursuant to KRS 278.020 and 278.300, or alternatively, a declaratory order establishing that a CPCN is not necessary pursuant to 807 KAR 5:001, Section 15; 807 KAR 5:001, Section 18; and 807 KAR 5:001, Section 19. Pursuant to KRS 278.300(2), the Commission is required to rule on an application for financing approval within 60 days of the date the application is filed unless it is necessary for good cause to continue the proceeding. No party requested to intervene. This matter is now before the Commission for a decision on the merits.

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<sup>1</sup> Harrison Association tendered its application on July 28, 2023. By letter dated September 22, 2023, the Commission rejected the application for filing deficiencies. The deficiencies were subsequently cured, and the application is deemed filed on September 29, 2023.

## BACKGROUND

Harrison Water is a water association organized pursuant to KRS Chapter 273 that provides water service to approximately 6,197 commercial and residential customers in Bourbon, Harrison, Nicholas, Pendleton, and Scott counties.<sup>2</sup> Harrison Water had a net plant in service of \$9,253,614.<sup>3</sup> Harrison Water's most recent rate case was filed in 2023 and is pending final order by the Commission.<sup>4</sup>

Harrison Water requested either a CPCN and an order approving financing, or alternatively, a declaratory order establishing that a CPCN is not necessary, in this matter for a collective system improvement to three steel water tanks.<sup>5</sup> The three water tanks are located in Cynthiana and Berry, Kentucky, and are known as the Mudlick Tank (built in 1979), the Colmansville Tank (built in 1979), and the Switzer Pike Tank (built in 1976).<sup>6</sup> The three tanks have mortgages from 2010. Harrison Water proposed a total of three separate contracts with Utility Service Co. Inc. (Utility Service), one to rehabilitate each water tank.<sup>7</sup> The proposed work includes interior cleaning and repair, exterior painting preparation, painting, welding, and repairs of needed items, with continued maintenance.<sup>8</sup> The contracts are structured so that the cost of the substantive rehabilitation is spread

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<sup>2</sup> *Annual Report of Harrison Water to the Public Service Commission for the date ended December 31, 2022* (2022 Annual Report) at 12 and 49.

<sup>3</sup> 2022 Annual Report at 16.

<sup>4</sup> Case No. 2023-00154, *Electronic Application of Harrison County Water Association, Inc. for an Alternative Rate Adjustment* (filed May 18, 2023).

<sup>5</sup> Application at 2.

<sup>6</sup> Application at 2.

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

<sup>8</sup> Application at 3.

over the course of the first five years, with a lower annual cost beginning in year six for annual maintenance. The total estimated costs of rehabilitation for each water tank are as follows: \$49,548 for each of the first five years and \$8,301 for each additional year thereafter for the Mudlick Tank; \$28,404 for each of the first five years and \$8,177 for each year thereafter for the Colmansville Tank; and \$26,919 for each of the first five years and \$8,603 for each year thereafter for the Switzer Pike Tank.<sup>9</sup> If the contracts are canceled prior to the end of the first five years, Utility Service will nonetheless be entitled to the full contract price of the first five years.<sup>10</sup> The total five year cost for all three water tanks is \$524,335.<sup>11</sup>

Harrison Water stated that it believes it has the cash reserves to fulfill the contracts without any formal financing.<sup>12</sup>

#### LEGAL STANDARD

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>13</sup>

"Need" requires:

[A] showing of a substantial inadequacy of existing service, involving a customer market sufficiently large to make it

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<sup>9</sup> Application at 3.

<sup>10</sup> Application at 3.

<sup>11</sup> Application at 2.

<sup>12</sup> Application at 2.

<sup>13</sup> *Kentucky Utilities Co. v. Pub. Service Comm'n*, 252 S.W.2d 885 (Ky. 1952).

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>14</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>15</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>16</sup> Selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.<sup>17</sup> All relevant factors must be balanced.<sup>18</sup>

An exception to the CPCN requirement is provided in KRS 278.020(1)(a)(2) for “ordinary extensions of existing systems in the usual course of business.” This exception is further described in 807 KAR 5:001, Section 15(3), which states:

A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property, or facilities, or conflict with the

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<sup>14</sup> *Kentucky Utilities Co. v. Pub. Service Comm’n*, 252 S.W.2d at 890.

<sup>15</sup> *Kentucky Utilities Co. v. Pub. Service Comm’n*, 252 S.W.2d at 890.

<sup>16</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).

<sup>17</sup> See *Kentucky Utilities Co. v. Public Service Comm’n*, 390 S.W.2d 168, 175 (Ky. 1965).

<sup>18</sup> 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.

existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general or contiguous area in which the utility renders service, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

The Commission has interpreted 807 KAR 5:001, Section 15(3), as stating that no CPCN is required for extensions “that do not result in wasteful duplication of utility plant, do not compete with the facilities of existing public utilities, and do not involve a sufficient capital outlay to materially affect the existing financial condition of the utility involved or to require an increase in utility rates.”<sup>19</sup>

Pursuant to 807 KAR 5:001, Section 19, the Commission may, upon application by a person substantially affected, “issue a declaratory order . . . with respect to the meaning and scope of an order or administrative regulation of the commission or provision of KRS Chapter 278.”<sup>20</sup> An application for a declaratory order must

- (a) Be in writing;
- (b) Contain a complete, accurate, and concise statement of facts upon which the application is based;
- (c) Fully disclose the applicant’s interest;
- (d) Identify all statutes, administrative regulations, and orders to which the application relates; and
- (e) State the applicant’s proposed resolution or conclusion.<sup>21</sup>

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<sup>19</sup> Case No. 2000-00481, *Application of Northern Kentucky Water District (A) for Authority to Issue Parity Revenue Bonds in the Approximate Amount of \$16,545,000; and (B) A Certificate of Convenience and Necessity for the Construction of Water Main Facilities* (Ky. PSC Aug. 30, 2001), Order at 4.

<sup>20</sup> 807 KAR 5:001, Section 19(1); see also Case No. 2020-00095, *Electronic Application of Kenergy Corp. for a Declaratory Order* (Ky. PSC Mar. 11, 2021), Order at 4–5 (noting that Commission may issue a declaratory order, in its discretion, with respect to the meaning and scope of an order, regulation, or statute if a request is made by a person substantially affected).

<sup>21</sup> 807 KAR 5:001, Section 19(2).

Any factual allegation in an application for a declaratory order must be supported by an affidavit or verified.<sup>22</sup> The Commission “may dispose of an application for a declaratory order solely on the basis of the written submissions filed”<sup>23</sup> or may allow for other actions, including additional discovery, to ensure that the record is complete.

KRS 278.300 requires Commission authorization before a utility may “issue any securities or evidences of indebtedness, or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person.”<sup>24</sup> 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 the 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 AND FINDINGS

### Financing

As an initial matter, the Commission finds that Harrison Water’s contract with Utility Service constitutes an evidence of indebtedness and is controlled by KRS 278.300. The three contracts utilize the same form, with deviations only in price and the specific rehabilitation work to be performed by Utility Service. In each contract, Utility Service is

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<sup>22</sup> 807 KAR 5:001, Section 19(6).

<sup>23</sup> 807 KAR 5:001, Section 19(8); see also Case No. 2020-00095, Mar. 11, 2021 Order at 4–5 (noting that that Commission has discretion in whether to address an application for a declaratory order).

<sup>24</sup> KRS 278.300(1).

required to complete the rehabilitation work at the end of the first and third years of the contract, the cost of which is spread out over the course of five years in annual payments.<sup>25</sup> The contracts therefore represent a debt for Harrison Water for work performed and constitute evidence of indebtedness pursuant to KRS 278.300.

The Commission finds that the financing is necessary for the completion of the projects discussed above and will not impair Harrison Water's ability to provide service. In order to fulfill its statutory obligation to provide adequate, efficient and reasonable water service,<sup>26</sup> Harrison Water must have adequate, sufficiently maintained water storage facilities located within its system. Thus, the Commission finds that the financing for which Harrison Water requests approval is for a lawful object within the corporate purpose of Harrison Water's utility operations, is necessary and appropriate for and consistent with proper performance of Harrison Water's service to the public, will not impair Harrison Water's ability to perform that service, and is reasonably necessary and appropriate for such purposes; therefore, the Commission finds that the approval of the financing should be granted.

#### Request for an Exception to the Requirement of a CPCN

For the reasons set forth below, the Commission finds that the rehabilitation of water storage tanks proposed by Harrison Water is an ordinary extension of an existing system in the usual course of business and does not require a CPCN.

The most common alternative to rehabilitating a water tank is to replace the entire unit. The cost of replacement is generally far higher than rehabilitation. For example, in

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<sup>25</sup> Application, Exhibit A at 2, Exhibit B at 2, and Exhibit C at 2.

<sup>26</sup> KRS 278.030(2).

Case No. 2023-00097, the Commission approved rehabilitation as it found the likely credible cost of replacement for a single water tank to be between \$400,000 and \$1,000,000.<sup>27</sup> By contrast, no individual contract contemplated in this case will be more than \$250,000, close to half the amount of a potential replacement unit. Consequently, the Commission finds that there is no wasteful duplication in this case.

Additionally, the Commission determines that the rehabilitation of water tanks will not involve a sufficient capital outlay to materially affect the existing financial condition of Harrison Water or require an increase in utility rates. The Mudlick Tank, Colmansville Tank, and Switzer Pike Tank will cost a total of \$247,740, \$142,020, and \$134,595, respectively, over the first five years of the contacts' performance.<sup>28</sup> Each of these costs represent 2.7 percent, 1.5 percent, and 1.5 percent of Harrison Water's 2022 net plant in service. Moreover, Harrison Water currently has a rate case pending final Commission Order in Case No. 2023-00154. The Commission therefore finds that the projects will not involve a sufficient capital outlay to materially affect the existing financial condition of Harrison Water or require an increase in utility rates.

Having considered the application and all evidence in the record, the Commission finds that a CPCN is not required for Harrison Water to proceed with the rehabilitation projects because the rehabilitation is being done in the usual course of business, does not result in wasteful duplication, and will not involve sufficient capital outlay to materially affect Harrison Water's financial condition.

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<sup>27</sup> Case No. 2023-00097, *Electronic Application of Bath County Water District for a Certificate of Public Convenience and Necessity to Construct and Finance Improvement Projects Pursuant to 278.020 and 278.300* (Ky. PSC June 29, 2023), Order at 3.

<sup>28</sup> Application, Exhibit A at 2, Exhibit B at 2, and Exhibit C at 2.



IT IS THEREFORE ORDERED that:


1. Harrison Water's application for a declaratory order is granted.
2. The three water tank rehabilitation projects are an ordinary extension in the usual course of business, and a CPCN, pursuant to KRS 278.020(1), is not required for the projects.
3. Harrison Water's request for approval of financing to complete the water tank rehabilitation projects is granted.
4. Harrison Water shall file notice of completion of the project's initial five year rehabilitation within 30 days of the projects' completion.
5. Any documents filed pursuant to ordering paragraph 4 herein shall reference this case number and shall be retained in the post-case correspondence file for this proceeding.
6. The Executive Director is delegated authority to grant reasonable extension of time for the filing of any documents required by ordering paragraph 4 of this Order upon Harrison Water's showing of good cause.
7. 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

  
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Chairman

  
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Vice Chairman

  
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Commissioner

ENTERED  
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KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
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Executive Director

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