

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF THE)	
BREATHITT COUNTY WATER DISTRICT FOR)	
THE ISSUANCE OF A CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY TO)	
CONSTRUCT A WATER SYSTEM)	
IMPROVEMENT PROJECT PURSUANT TO THE)	
PROVISIONS OF KRS 278.020 AND 807 KAR)	CASE NO.
5:001 OR ALTERNATIVELY, A DECLARATORY)	2023-00417
ORDER ESTABLISHING THAT A CERTIFICATE)	
OF PUBLIC NEED AND CONVENIENCE IS NOT)	
NECESSARY AS TO A WATERLINE EXTENSION)	
(KY. 30 EAST AND WOLF CREEK WATERLINE)	
EXTENSION PROJECT), PURSUANT TO 807 KAR)	
5:001(15) AND/OR 807 KAR 5:001(19))	

ORDER

On December 18, 2023, Breathitt County Water District (Breathitt District) tendered an application pursuant to KRS 270.020 and 807 KAR 5:001, Section 15, seeking a Certificate of Public Convenience and Necessity (CPCN) to construct a water system improvement project, or in the alternative, a declaratory order finding that the CPCN is not necessary pursuant to KRS 278.020(1)(a)(3)(b).¹ The application was found deficient on December 27, 2023, and Breathitt District filed documents correcting the deficiency on January 4, 2024. Breathitt District responded to one request for information.

¹ Breathitt District's Response to Commission Staff's First Request for Information (Staff's First Request) (filed on Feb. 16, 2024), Item 3.

LEGAL STANDARD

KRS 278.020(1)(a) requires utilities to obtain a CPCN prior to starting construction of any plant, equipment, property, or facility for public service. However, there are two relevant exceptions to this requirement. KRS 278.020(1)(a)(2) exempts “[o]rdinary extensions of existing systems in the usual course of business,” which are further described in 807 KAR 5:001, Section 15(3):

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 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.

“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.”² 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.³ Although cost is a factor, selection of a proposal that ultimately costs more than an

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

³ 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.

alternative does not necessarily result in wasteful duplication. All relevant factors must be balanced.⁴

KRS 278.020(1)(a)(3) also provides the following exemption:

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.

Pursuant to 807 KAR 5:001, Section 19, the Commission may enter a declaratory order, upon application by a person substantially affected, with respect to a provision of KRS Chapter 278. The application must be in writing; contain a complete, concise statement of the facts upon which the application is based; disclose the applicant's interest; identifies all statutes to which the application relates; and states a proposed resolution.

⁴ 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), final Order, at 6.

BACKGROUND

Breathitt District stated that it is seeking to complete a project that will extend water service to 87 new connections.⁵ Breathitt District stated that the project would consist of approximately 42,800 linear feet (LF) of 6-inch pipe, 14,300 LF of 4-inch pipe, 250 LF of 2-inch waterlines, two creek/river crossings, installation of a duplex pump station, and installation of a 27,000-gallon ground storage tank.⁶

Breathitt District stated the total as-bid construction cost would be \$3,446,408.⁷ Breathitt District stated that this project would be fully funded by a Cleaner Water Grant of \$3,630,000.00.⁸ Breathitt District also stated that no rate adjustment would result from the project.⁹

DISCUSSION AND FINDINGS

The Commission finds that it may enter a declaratory order as the application filed by Breathitt District complied with 807 KAR 5:001, Section 19. Breathitt District filed a written application that included a complete, accurate, and concise statement of the facts; identified the statute to which the request relates, KRS 278.020(1)(3)(b); and proposed the conclusion that the Commission find that KRS 278.020(1)(3)(b) exempts the proposed project from needing a CPCN.

Based upon a review of the proposed project, its financing, and the applicable statute, the Commission finds that this project is a waterline extension or improvement

⁵ Breathitt District's Project Description (filed on Jan. 4, 2024)

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⁷ Breathitt District's Response to Staff's First Request, item 1.

⁸ Application at unnumbered page 3.

⁹ Application at unnumbered page 3.

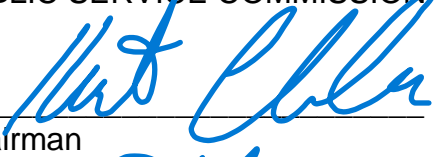
project within the scope of KRS 278.020(1)(3)(b), that Breathitt District will not incur any obligations that would require Commission approval required by KRS 278.300 as the project is fully funded by a grant, that Breathitt District will not increase its rates as a result of the project, and that the project is substantially similar to a project that the Commission previously found was exempted from the requirements for a CPCN pursuant to KRS 278.020(1)(3)(b).¹⁰

IT IS HEREBY ORDERED that:

1. Breathitt District's request for a declaratory order, finding that the proposed project is exempt from the requirement to obtain a CPCN pursuant to KRS 278.020(1)(3)(b), is granted.
2. This case is closed and removed from the Commission's docket.

¹⁰ Case No. 2018-00355, *Application of Breathitt County Water District for a Deviation from Filing a Certificate of Public Convenience and Necessity* (Ky PSC Nov 29, 2018), Order.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
MAR 13 2024 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


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