

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC JOINT APPLICATION OF LARUE)	
COUNTY WATER DISTRICT NO. 1 AND THE)	
CITY OF NEW HAVEN FOR AN ORDER)	
APPROVING THE TRANSFER OF OWNERSHIP)	
OF THE CITY OF NEW HAVEN'S WATER)	CASE NO.
SYSTEM AND APPROVING LARUE COUNTY)	2022-00207
WATER DISTRICT NO. 1'S ASSUMPTION OF)	
CERTAIN DEBT OBLIGATIONS OF THE CITY OF)	
NEW HAVEN PURSUANT TO THE PROVISIONS)	
OF KRS 278.020, KRS 278.300, AND 807 KAR)	
5:001)	

ORDER

On July 14, 2022, Larue County Water District No. 1 (Larue District No. 1) and the city of New Haven (New Haven) (collectively, Joint Applicants) filed an application, pursuant to KRS 278.020, KRS 278.300 and 807 KAR 5:001, requesting approval of Larue District No. 1's acquisition of New Haven, a city-owned water utility, and to assume New Haven's debt obligations. By Order entered July 27, 2022, the Commission found good cause to continue the proceeding for 60 additional days to November 10, 2022 in order to ensure the orderly review of the application and establish a procedural schedule.

The Joint Applicants responded to two data requests as well as an updated Response to an Exhibit.¹ The record is complete, and the matter stands ready for a decision.

¹ Joint Applicants' Response to Commission Staff's First Request for Information (filed on Aug. 24, 2022) and Joint Applicant's Response to Commission Staff's Second Request for Information (filed on Sept. 13, 2022). See also Revised Exhibit 14 (filed on Aug. 29, 2022).

LEGAL STANDARD

At issue is the Commission's approval of the application pursuant to KRS 278.020 as well as Larue District No. 1's assumption of the debt obligations of New Haven in accordance with KRS 278.300.

New Haven, as a city-owned water utility, is not subject to Commission jurisdiction.² Therefore, KRS 278.020(6) and 278.020(7), which require prior Commission approval of the transfer or control of any "utility," do not apply. However, in this case, a jurisdictional utility will be acquiring a system operated by a city and Commission approval is required pursuant to KRS 278.020(1)(a). KRS 278.020(1)(a) provides, in part, that, "[n]o person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public . . . until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction."

Larue District No. 1 proposes to acquire New Haven's water system, which is not a utility as defined by KRS 278.010(3), but, upon approval of this transaction, the system which New Haven formerly owned will be owned by a jurisdictional utility and will begin providing service to its customers as a jurisdictional utility. As such, Commission approval in the form of a certificate of public convenience and necessity (CPCN) is required prior to Larue District No. 1's acquisition of New Haven. To obtain a CPCN, the utility must demonstrate a need for such facilities and an absence of wasteful duplication.³

"Need" requires:

² KRS 278.010(3).

³ *Kentucky Utilities Co. v. Public Service Commission* 252 S.W.2d 885 (Ky. 1952).

[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.⁴

“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.”⁵ Pursuant to KRS 278.020(1)(a), the Commission must determine that public convenience and necessity require the services that Larue District No. 1 will provide to the former New Haven customers and that determination includes analysis as to whether the proposed acquisition would result in wasteful duplication of services provided or wasteful duplication of facilities.⁶

A plain reading of KRS 278.020 requires Commission approval of this acquisition. Requiring approval under KRS 278.020(1)(a) ensures that the Commission discharges its statutory duty to ensure that the acquiring utility’s ability to provide adequate service at fair, just and reasonable rates is not impaired. Additionally, insofar as the acquisition of a non-utility’s system may impact a jurisdictional utility’s ability to provide adequate and reasonable service, either to customers of the system to be acquired or the customers of

⁴ *Kentucky Utilities Co. v. Public Service Commission* 252 S.W.2d. 885, 890 (Ky. 1952).

⁵ *Kentucky Utilities Co. v. Public Service Commission* 252 S.W.2d. 885, 890 (Ky. 1952).

⁶ *Kentucky Utilities Co. v. Public Service Commission* 252 S.W.2d 885, 890 (Ky. 1952); *Citizens for Alternative Water Solutions v. Kentucky Public Service Commission* 358 S.W.3d 488 (Ky. App. 2011) (review denied).

the acquiring utility, it follows that the Commission has such authority to prevent such an acquisition and its approval for such an acquisition is required.⁷

As part of the acquisition, Larue District No. 1 proposed to assume the obligations of New Haven and the transaction must be reviewed in accordance with KRS 278.300, and the Commission must approve the indebtedness.

In relevant part, KRS 278.300(3) states:

[A]fter 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.

BACKGROUND

Parties

Larue District No.1. Larue District No. 1 was formed on May 1, 1963,⁸ and acts pursuant to KRS Chapter 74. As of December 31, 2021, Larue District No. 1 had approximately 3,784 residential and commercial customers.⁹ Larue District No. 1 has seven full-time employees.¹⁰ Of those seven employees, four are certified water

⁷ 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 June 19, 2020), Order at 14. See also *Public Service Commission v. Cities of Southgate and Highland Heights*, 268 S.W.2d 19 (Ky.1954).

⁸ *Annual Report of Larue County Water District No. 1 to the Public Service Commission for the Calendar Year Ended December 31, 2021* (2021 Annual Report) at 9.

⁹ 2021 Annual Report at 49.

¹⁰ 2021 Annual Report at 13.

distribution system operators with valid water certification licenses issued by the Kentucky Board of Certification of Water.¹¹

Currently, Larue District No. 1 purchases its water from Bardstown, Campbellsville, Green River Valley Water District, Green Taylor Water District, Hodgenville, and New Haven.¹² Larue District No. 1 has consistently maintained a water loss percentage under 15 percent.¹³

New Haven. New Haven owns and operates water distribution facilities as well as wastewater collection and treatment facilities. New Haven does not own or operate a water treatment plant. New Haven purchases all of its water from Bardstown.¹⁴ As of December 31, 2021, New Haven had approximately 591 residential customers.¹⁵

Due to lack of employee retention, New Haven has been contracting water services and using stop gap measures until September 2021 when Larue District No. 1's water operators took over responsibilities.¹⁶

PROPOSED ACQUISITION

On March 17, 2022, the Joint Applicants entered into a Statement of Intent.¹⁷ On May 9, 2022, the Joint Applicants entered into an Asset Purchase Agreement.¹⁸

¹¹ Joint Application at 15, Exhibit 18.

¹² Larue District No. 1's Response to Commission Staff's Second Request for Information, Item 1.

¹³ 2021 Annual Report at 57, 2020 Annual Report at 57, 2019 Annual Report at 57.

¹⁴ [Water and Sewer - City of New Haven \(ky.gov\)](https://www.ky.gov/transportation/transportation-services/water-and-sewer/city-of-new-haven)

¹⁵ Joint Application at 5.

¹⁶ Joint Application, Exhibit 5 and Joint Applicants' Response to Commission Staff's First Request for Information, Item 7.

¹⁷ Joint Application, Exhibit 4.

¹⁸ Joint Application, Exhibit 5.

According to the Asset Purchase Agreement, New Haven is to transfer to Larue District No. 1 all New Haven's assets, including real and personal property, easements and licenses.¹⁹

The consideration to be exchanged will be \$550,000 total.²⁰ However, in the Asset Purchase Agreement, Larue District No. 1 had the option to pay the amount in cash or a combination of cash and an assumption of debt.²¹ Larue District No. 1 has decided to assume two of New Haven's debts, 1999A Bonds (RD Loan 92-02) and the 1999B Bonds (RD Loan 92-4).²² The total approximate outstanding liabilities to be assumed are \$209,900.²³ The difference of approximately \$340,100 will be paid in cashier's check on the date of closing.²⁴

DISCUSSION

The Joint Applicants filed several financial documents in support of the application. Larue District No. 1 provided audited financial statements for the years ended December 31, 2019, and 2020.²⁵ In addition, Larue District No. 1 provided debt information for the utility as well as the information about the assumption of New Haven's debts.

¹⁹ Joint Application, Exhibit 5 at 3-5.

²⁰ Joint Application, Exhibit 5 at 5.

²¹ Joint Application, Exhibit 5 at 5.

²² Joint Application, Response to Commission Staff's First Request for Information, Item 3.

²³ Joint Application, Response to Commission Staff's First Request for Information, Item 3.

²⁴ Joint Application, Exhibit 5 at 19.

²⁵ Joint Application, Exhibit 12 at 99.

The Commission finds that Larue District No. 1 has the financial capability to assume New Haven's debts. The information substantiated Larue District No. 1's assertion that it will be able to continue to meet all debt obligations.²⁶

Larue District No. 1 will acquire assets with a book value of \$642,635²⁷ (measured as of December 31, 2021) at a purchase price of \$550,000 which is comprised of cash and the assumption of two United States Department of Agriculture, Rural Development (RD) bonds with a current balance of \$209,900. When the new debt is combined with Larue District No.1's existing debt of \$4,703,334, it results in a combined debt of only \$4,913,234.²⁸ Combining Larue District No. 1's existing debt and the new debt acquired from New Haven, Larue District No. 1's debt per customer will only be \$1,123 following the acquisition.²⁹

Additionally, the Commission finds that the acquisition will result in a rate savings to many of the customers of New Haven. While the current rates of Larue District No. 1 will not be impacted, many "outside city" customers of New Haven will experience a rate decrease.³⁰ The minimum bill for New Haven is currently for 2,000 gallons of water per month.³¹ The minimum bill for Larue District No. 1 is for 1,000 gallons of water per

²⁶ Joint Application Exhibit 9 at 89 and Exhibit 13 at 156.

²⁷ Response to Commission Staff's First Request, Item 14

²⁸ Joint Application, Exhibit 8 and Exhibit 9.

²⁹ Joint Application, Exhibit 13.

³⁰ Joint Application, Exhibit 21 and Larue District No. 1's Response to Commission Staff's First Request, Item 2.

³¹ Joint Application, Exhibit 21 and Larue District No. 1's Response to Commission Staff's First Request, Item 2.

month.³² According to the Joint Applicants, 141 or 40 percent of the residential customers of New Haven use less than 2,000 gallons of water per month.³³ All of these customers will see a decrease in their bills.

Based on an “inside city” New Haven designation, an inside city customer will see their average monthly bill increase from \$32.07 to \$33.24, an increase of \$1.17, or approximately 3.65 percent.³⁴ Based on an “outside city” New Haven designation, an outside city customer would see their average monthly bill decrease from \$42 to \$41.86, a decrease of 14 cents, or approximately .33 percent.³⁵

Larue District No. 1’s territory surrounds New Haven’s territory on three sides.³⁶ Larue District No. 1 will save in wholesale water purchase expenditures. Larue District No. 1 will be able to purchase water directly from Bardstown and other wholesale suppliers. As of July 1, 2022, the wholesale rates New Haven increased to 41 cents higher per 1,000 gallons than the wholesale rates for Bardstown.³⁷

Historically, LaRue District No. 1 purchased over 1,000,000 gallons per month or over 12,000,000 gallons per year directly from New Haven to supply the Lyons and adjacent areas, the most direct and most efficient route.³⁸ Because of the cost differential

³² Joint Application, Exhibit 21 and Larue District No. 1’s Response to Commission Staff’s First Request, Item 2.

³³ Joint Application, Exhibit 21 and Larue District No. 1’s Response to Commission Staff’s First Request, Item 2.

³⁴ Joint Application, Exhibit 21 and Larue District No. 1’s Response to Commission Staff’s First Request, Item 2.

³⁵ Larue District No. 1’s Response to Commission Staff’s First Request, Item 2.

³⁶ Larue District No. 1’s Response to Commission Staff’s First Request, Item 1.

³⁷ Larue District No. 1’s Response to Commission Staff’s Second Request, Item 2, Attachment.

³⁸ Larue District No. 1’s Response to Commission Staff’s Second Request, Item 1.

in the cost of purchasing water from New Haven versus purchasing it directly from Bardstown, Larue District No. 1 started purchasing almost all the water needed to serve the Lyons area directly from Bardstown.³⁹ Unfortunately, the water must travel further through smaller lines meaning the water is not quite as "fresh" when it is consumed by the customers in the Lyons area.⁴⁰ Once Larue District No. 1 acquires New Haven's water system, the district asserts that the flow of the water to the Lyons area will immediately be changed to decrease the aging of the water delivered to Lyons as well as improve flow.⁴¹

Larue District No. 1 provided evidence that its employees have the requisite qualifications and certifications to operate the water system. Further, Larue District No. 1 has operated New Haven's water system since May 2022 using Larue District No. 1's employees. A review of recent annual report filings indicate that Larue District No. 1 has operated with a positive net operating income during 2020 and 2021.

The Commission finds that public necessity and convenience will be met by this merger. The existing need for these services will continue after the transfer and there is no wasteful duplication of services or resources as the current demand for services will be met by Larue District No. 1 using existing systems. There will also be no additional capital outlay or investment to provide the services. Therefore, the Commission finds that the proposed acquisition meets the requirement in KRS 278.020(1) and should be approved.

³⁹ Larue District No. 1's Response to Commission Staff's Second Request, Item 1.

⁴⁰ Larue District No. 1's Response to Commission Staff's Second Request, Item 1.

⁴¹ Larue District No. 1's Response to Commission Staff's Second Request, Item 1.

The Joint Applicants have provided sufficient evidence that Larue District No. 1's acquisition of New Haven's and assumption of New Haven's debts and obligations will not impair Larue District No. 1's ability to provide reasonable and adequate service to either its existing customers or the customers it will acquire as a result of approval of this transaction in accord with KRS 278.300.

Finally, in accordance with KRS 224A.300(1) and KRS 74.361(1), the public policy of Kentucky is to encourage regionalization, consolidation, and merger of water utilities. The proposed transaction carries out that public policy.

IT IS THEREFORE ORDERED that:

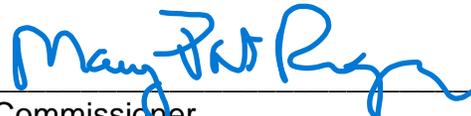
1. Pursuant to KRS 278.020(1)(a), Larue District No. 1 is granted a CPCN to provide utility service to and for the public
2. The application for acquisition is approved.
3. Larue District No. 1's acquisition of the indebtedness of New Haven is approved.
4. Within five days of the completion of the approved transfer, Joint Applicants shall file written notice setting forth the date that the acquisition was completed in a post-case filing.
5. Within 14 days of Larue District No. 1 finalizing the assumption of the United States Department of Agriculture, Rural Development loans, Larue District No. 1 shall provide updated loan paperwork to the Commission and note that it is a post-case filing for this case.
6. This case is now closed and removed from the Commission's docket.

PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman



Commissioner



ATTEST:



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