

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC JOINT APPLICATION OF)	
BLUEGRASS WATER UTILITY OPERATING)	
COMPANY, LLC FOR APPROVAL OF)	CASE NO.
ACQUISITION AND TRANSFER OF OWNERSHIP)	2023-00218
AND CONTROL OF ASSETS OF MAGRUDER)	
VILLAGE WATER COMPANY)	

ORDER

On June 29, 2023, Bluegrass Water Utility Operating Company, LLC (Bluegrass Water) and Magruder Village Water Company (Magruder Village Water) filed a joint application seeking approval of the transfer of a wastewater treatment facility from Magruder Village Water to Bluegrass Water pursuant to KRS 278.020. Bluegrass Water responded to one request for information from Commission Staff and on September 1, 2023, filed a request that the Commission take this matter under submission on the written record. This matter is now before the Commission for a decision on the merits.

LEGAL STANDARD

KRS 278.020(6) and 278.020(7) require prior Commission approval of the transfer or control of any “utility.” Magruder Village Water is not and has not been registered with the Commission as a wastewater utility. It is not subject to the Commission’s jurisdiction because it is only providing service in a particular subdivision¹ as opposed to service “for the public” and is therefore not a “utility” as defined in KRS 278.010(3). Thus, neither

¹ Application at 3.

KRS 278.020(6) nor KRS 278.020(7) are applicable to the proposed transaction. Because KRS 278.020(6) and (7) apply only to the transfer of jurisdictional utilities, the Commission has previously held that the acquisition of a non-jurisdictional utility by a jurisdictional utility did not require any prior approval pursuant to KRS 278.020. However, in Case No. 2020-00028,² the Commission held that before a utility commences operating a non-jurisdictional facility, the utility must obtain a certificate of public convenience and necessity (CPCN) pursuant to KRS 278.010(1)(a), which states, in relevant part, that:

[n]o person . . . shall commence providing utility service to or for the public or begin the construction of any plant . . . until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.

To obtain a CPCN, the utility must demonstrate a need for such facilities and an absence of wasteful duplication.³

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.⁴

² 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.

³ *Kentucky Utilities Co. v. Pub. Serv. Comm 'n*, 252 S.W.2d 885 (Ky. 1952).

⁴ *Kentucky Utilities Co.*, 252 S.W.2d at 890.

“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 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.⁶ Although cost is a factor, selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.⁷ All relevant factors must be balanced.⁸

When reviewing whether to grant a CPCN authorizing a utility to purchase a non-jurisdictional system, the Commission also looks at whether the acquisition will impair the utility’s ability to provide reasonable and adequate service to the utility’s existing customers or the customers of the system the utility is acquiring.⁹

BACKGROUND

Magruder Village Water owns a wastewater treatment facility that serves 20 customers in the Magruder Village neighborhood in McCracken County.¹⁰ Bluegrass

⁵ *Kentucky Utilities Co.*, 252 S.W.2d at 890.

⁶ 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.

⁷ 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.

⁸ Case No. 2005-00089, Aug. 19, 2005 final Order at 6.

⁹ Case No. 2020-00028, June 19, 2020 Order at 16.

¹⁰ Application at 3.

Water currently operates several wastewater treatment facilities in Kentucky and serves 3,599 customers.¹¹

Bluegrass Water's parent company Central States Water Resources, Inc. (CSWR) entered into an Agreement for Sale of Utility System (Agreement) for the purchase of the Magruder Village wastewater system.¹² CSWR plans to fund the purchase and assign the Agreement to Bluegrass Water, which plans to hire a third-party operations and management contractor to run the facility.¹³ Bluegrass Water also plans to make improvements to the facility to correct effluent exceedances as recommended in an engineering memo provided by 21 Design.¹⁴ Since January 2013, Magruder Village Water has been cited with 190 effluent exceedances.¹⁵ Bluegrass Water stated that it is negotiating an Agreed Order with the Division of Water (DOW) to provide a Corrective Action Plan (CAP) for remedying effluent exceedances.¹⁶ Current rates for Magruder Village Water customers would initially remain in effect.¹⁷

DISCUSSION AND FINDINGS

Having considered the application and all evidence in the record, the Commission finds that the CPCN should be granted. The transfer of the wastewater facility has been established as necessary by the existence of numerous effluent exceedances that the

¹¹ Application at 2–3.

¹² Application, Exhibit 4.

¹³ Application at 5, 7; Bluegrass Water's Response to Commission Staff's First Request for Information (Staff's First Request) (filed Aug. 11, 2023), Item 1(a).

¹⁴ Application at 5; Exhibit 3.

¹⁵ Application, Exhibit 3(d).

¹⁶ Bluegrass Water's Response to Staff's First Request, Item 3(c).

¹⁷ Application at 6.

current owner has been unable to permanently rectify. The Commission has previously determined that Bluegrass Water has the necessary financial, technical, and managerial abilities to provide reasonable sewer service.¹⁸ Bluegrass Water's ability to get its several Kentucky sewer facilities working properly and meaningfully address improvement of effluent compliance demonstrates that it has the necessary technical and managerial abilities to run the Magruder Village wastewater facility. Bluegrass Water has hired an engineering firm to inspect the facility and make improvement recommendations intended as the basis for a CAP to be submitted to the DOW. The Commission finds that these facts establish need and that the acquisition will improve service to the customers of the system that Bluegrass Water is acquiring. Nothing in the record indicates that service will be impaired to Bluegrass Water's existing customers, none of whom will be connected to the Magruder Village wastewater facility.

Regarding lack of wasteful duplication, the nearest municipal sewer system connection is approximately five miles away in Paducah.¹⁹ Although Bluegrass Water did not provide any evidence of the cost of connecting to this system, the cost of constructing miles of sewer line, even without any pump stations, would be significantly more costly

¹⁸ See Case No. 2019-00104, *The Proposed Acquisition by Bluegrass Water Utility Operating Company, LLC and the Transfer of Ownership and Control of Assets by: P.R. Wastewater Management, Inc.; Marshall County Environmental Services LLC; LH Treatment Company, LLC; Kingswood Development, Inc.; Airview Utilities, LLC; Brocklyn Utilities, LLC; Fox Run Utilities, LLC; and Lake Columbia Utilities, Inc.* (Ky. PSC August 14, 2019), Order; 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; Case No. 2020-00297, *Electronic Proposed Acquisition by Bluegrass Water Utility Operating Company, LLC and the Transfer of Ownership and Control of Assets by: Delaplain Disposal Company; Herrington Haven Wastewater Company, Inc.; Springcrest Sewer Company, Inc.; and Woodland Acres Utilities, LLC* (Ky. PSC Jan. 14, 2021), Order; Case No. 2021-00265, *Electronic Proposed Acquisition of Wastewater System Facilities by Bluegrass Water Utility Operating Company, LLC* (Ky. PSC Feb. 24, 2022), Order.

¹⁹ <https://kygeonet.ky.gov/kia/cw/> (last accessed Sept. 26, 2023).

than the amount Bluegrass Water intends to spend upgrading the Magruder Village wastewater facility.²⁰

Approval of this transfer is conditioned on assignment of the Agreement from CSWR to Bluegrass Water and execution by Bluegrass Water and the DOW of an Agreed Order requiring Bluegrass Water to file a CAP with the DOW.

IT IS THEREFORE ORDERED that:

1. The transfer of the Magruder Village wastewater facility as described in the joint application of Magruder Village Water and Bluegrass Water is approved, conditioned on assignment of the transfer Agreement from CSWR to Bluegrass Water and execution by Bluegrass Water and the DOW of an Agreed Order requiring Bluegrass Water to file a CAP with the DOW.

2. 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.

3. Within five days of the completion of the approved transfer, joint applicants shall file a copy of the assignment of the Agreement from CSWR to Bluegrass Water and a copy of the Agreed Order with the DOW.

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

²⁰ Application, Exhibit 3 at 6.

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w/permission*

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