

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF MOUNTAIN WATER DISTRICT )  
FOR A CERTIFICATE OF PUBLIC CONVENIENCE )  
AND NECESSITY TO CONSTRUCT A WASTEWATER )  
PROJECT AND FOR A DECLARATION OF ) CASE NO. 2001-361  
JURISDICTION AND APPROVAL OF A )  
WASTEWATER TREATMENT CONTRACT )  
PURSUANT TO KRS 278.020 AND 278.300 )

ORDER

Mountain Water District has applied for a Certificate of Public Convenience and Necessity to construct wastewater collection and transmission facilities and for a declaratory ruling on the Commission's jurisdiction over its proposed wastewater treatment services contract with the city of Williamson, West Virginia ("Williamson").

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. Mountain Water District is a water district organized pursuant KRS Chapter 74.
2. Mountain Water District provides water service to approximately 11,955 customers in Pike County, Kentucky.
3. Mountain Water District provides sewer service to approximately 396 customers in Pike County, Kentucky.
4. Mountain Water District proposes to construct the "South Williamson Sanitary Sewer Improvements Project – Phase II." This project consists of the

construction of a mainline lift station; 60 residential lift stations; 25,000 linear feet of gravity sewers; 9,400 linear feet of force mains; and over 200 service connections.

5. The proposed facilities will be constructed in and around the unincorporated area of Pike County, Kentucky known as South Williamson.

6. The proposed facilities will allow for sanitary sewer service to approximately 239 households located west of South Williamson along the Julius and Murphy Branches of the Tug Fork River and along Kentucky State Route 292. No sewage treatment facilities are currently located in these areas. The topography of these areas is not conducive to the use of septic systems.

7. The proposed project also involves the modification of existing wastewater facilities in the South Williamson area to separate combined sanitary/storm sewer facilities. This separation will prevent the bypass of sanitary sewage into Tug Fork River during periods of high stormwater flow.

8. Upon their completion, the proposed facilities will be used to collect and transport sanitary sewage through an existing 6-inch force main across the Tug Fork River to Williamson's wastewater treatment facilities in Williamson, West Virginia.<sup>1</sup> No Williamson wastewater facility is located in the Commonwealth of Kentucky.

9. On December 29, 1999, Williamson and Mountain Water District executed a Wastewater Treatment Services Purchase Contract ("Contract"). Under the Contract's provisions, Williamson agreed to accept all wastewater that Mountain Water District delivers to its wastewater treatment system for a period of 40 years. Mountain Water District agreed to pay for treatment service based upon a rate schedule set forth

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<sup>1</sup> See Letter from Kevin Howard, Vice President, Summit Engineering, Inc., to W. Randall Jones, Counsel for Mountain Water District (Nov. 14, 2001).

in the Agreement. The parties further agreed that the Contract's provisions would not become effective until approved by the Commission, if such approval was necessary.

10. Estimated total cost of the proposed improvement project is \$2,384,793.

11. Mountain Water District will fund the cost of the proposed project with a contribution of \$145,791 from Pike County Fiscal Court, a grant of \$601,502 from the Local Government Economic Development Fund, a grant of \$1,437,500 from the Economic Development Administration, and an appropriation of \$200,000 from the Kentucky State Treasury.

12. Summit Engineering, Inc. of Lexington, Kentucky prepared the engineering plans and specifications for the proposed project.

13. The Division of Water of the Kentucky Natural Resources and Environmental Protection Cabinet ("DOW") has approved the plans and specifications for the proposed project.

14. The proposed facilities are part of a regional facility plan for South Williamson that the DOW has approved.

15. The proposed facilities will not compete with the facilities of any existing sewage treatment facilities.

16. The proposed facilities will not compete with the facilities of any existing public utility nor will they conflict with the existing certificates or service of other public utilities operating in the same area and under the Commission's jurisdiction.

Based upon its review of the evidence of record and the findings set forth above, the Commission makes the following conclusions of law:

1. The Commission's jurisdiction extends "to all utilities in this state." KRS 278.040(2).

2. A utility is “any person except a city, who owns, controls, operates, or manages any facility used or to be used in connection with . . . [t]he collection, transmission, or treatment of sewage for the public, for compensation . . . .” KRS 278.010(3)(f).

3. Mountain Water District is a utility subject to Commission jurisdiction. KRS 278.010(3)(f); KRS 278.015; KRS 278.040(2).

4. KRS 278.020(1) provides that no person “shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010 . . . until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.”

5. As Williamson does not own or operate any facilities within the Commonwealth of Kentucky that are used in the collection, transmission, or treatment of sewage, it is not a utility and its rates and service are therefore outside Commission jurisdiction.<sup>2</sup>

6. Pursuant to KRS 278.200 and the holding of Simpson County Water District v. City of Franklin, Ky., 872 S.W.2d 460 (1994), the Commission has the authority to review the rates for utility service provided by a city to a utility.

7. The term “city” as used in KRS 278.200 applies only to cities incorporated and organized under the laws of the Commonwealth of Kentucky. See, e.g., City of Cincinnati, Ohio v. Commonwealth ex rel. Reeves, Ky., 167 S.W.2d 709 (1942) (“A municipality operating beyond the boundaries of the sovereignty creating it, is

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<sup>2</sup> See Case No. 99-276, Proposed Adjustment of the Wholesale Water Service Rates of the City of Williamson, West Virginia (Ky.PSC Aug. 26, 1999).

universally regarded as a private corporation with respect to such operations.”). As Williamson is not a Kentucky city, KRS 278.200 does not apply to the Contract and does not require Commission review or approval of the Contract.

8. The Commission has no jurisdiction over the Contract and our approval of the Contract's terms is not required.<sup>3</sup>

9. Construction of the proposed facilities will not result in the wasteful duplication of existing utility facilities.

10. The public convenience and necessity require construction of the proposed project.

IT IS THEREFORE ORDERED that:

1. Mountain Water District is granted a Certificate of Public Convenience and Necessity to construct the proposed wastewater improvement project as set forth in its application.

2. Mountain Water District shall obtain approval from the Commission prior to performing any additional construction not expressly authorized by this Order.

3. Any deviation from the construction approved shall be undertaken only with the prior approval of the Commission.

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<sup>3</sup> While the Contract does not require Commission approval, its effect upon Mountain Water District's rates and quality of service is a matter within the Commission's jurisdiction. To the extent that the Contract would adversely affect Mountain Water District's rates or quality of service and that Mountain Water District's entry into the Contract can be considered unreasonable or imprudent, the Commission has the authority to adjust Mountain Water District's rates to protect its ratepayers from any unreasonable costs resulting from an unreasonable or imprudent decision or to direct any necessary actions to protect against the degradation of service quality. See, e.g., City of Newport, Kentucky v. Campbell County Kentucky Water District, Case No. 89-014 (Ky.PSC Jan. 31, 1990) at 20.

4. Mountain Water District shall furnish documentation of the total costs of this project including the cost of construction and all other capitalized costs (engineering, legal, administrative, etc.) within 60 days of the date that construction 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. Mountain Water District shall require the proposed construction to be inspected under the general supervision of a professional engineer with Kentucky licensure, competent to practice civil or mechanical engineering to ensure that the construction work is done in accordance with the contract drawings and specifications and in conformance with the best practices of the construction trades involved in the project.

6. Mountain Water 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.

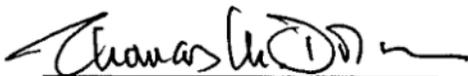
7. Mountain Water District shall notify the Commission 7 days prior to the actual start of construction and at the 50 percent completion point.

8. Mountain Water District's application for a declaratory order is granted. The Contract is not subject to Commission jurisdiction and does not require Commission approval.

Done at Frankfort, Kentucky, this 19<sup>th</sup> day of November, 2001.

By the Commission

ATTEST:

  
Executive Director