

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF CUMBERLAND)	
FALLS HIGHWAY WATER DISTRICT FOR)	
APPROVAL TO USE SURPLUS PROCEEDS OF)	
AN ASSISTANCE AGREEMENT WITH THE)	
KENTUCKY INFRASTRUCTURE AUTHORITY)	
FOR LINE REPLACEMENT AND)	
REINFORCEMENT PROJECT CONTRACT NO. 3)	CASE NO.
AND FOR A DECLARATORY ORDER THAT A)	2023-00004
CERTIFICATE OF PUBLIC CONVENIENCE AND)	
NECESSITY IS NOT REQUIRED FOR LINE)	
REPLACEMENT AND REINFORCEMENT)	
PROJECT CONTRACT NO. 3, OR IN THE)	
ALTERNATIVE A CERTIFICATE OF PUBLIC)	
CONVENIENCE FOR THAT PROJECT)	

O R D E R

On February 2, 2023, Cumberland Falls Highway Water District (Cumberland Falls District) filed an application requesting approval to use \$396,502.65 of surplus proceeds from an assistance agreement (Assistance Agreement) with the Kentucky Infrastructure Authority (KIA) that was previously approved by the Commission in Case No. 2017-00268¹ towards the cost of Line Replacement and Reinforcement Project Contract No. 3 (Contract No. 3). Cumberland Falls District further requested a declaration that a Certificate of Public Convenience and Necessity (CPCN) is not required to construct the facilities to be constructed pursuant to Contract No. 3.

¹ Case No. 2017-00268, *Application of Cumberland Falls Highway Water District for Approval of Financing and Issuance of a Certificate of Convenience and Necessity* (Ky. PSC Aug. 14, 2017).

BACKGROUND

Cumberland Falls District, a water district organized under KRS Chapter 74, provides retail water service to approximately 3,531 customers in Whitley County, Kentucky.² In 2021, Cumberland Falls District had annual operating revenues of \$2,130,776, and is a Class A Water District as defined by the Uniform System of Accounts.³

In Case No. 2017-00268, the Commission granted Cumberland Falls District a CPCN for a line replacement and reinforcement project (Project). The Project involved 2,825 linear feet of 6-inch polyvinyl chloride (PVC) water main, approximately 32,545 linear feet of 4-inch PVC water main; approximately 11,760 linear feet of 3-inch PVC water main; and associated appurtenances such as gate valves, blow-off assemblies, air release valves, residential meter settings, and leak detection meters.⁴ Cumberland Falls District asserted these water mains were intended to replace approximately 39,300 linear feet of existing water distribution mains that were undersized or prone to excessive leaking.⁵ In July 2017, Cumberland Falls District entered into an assistance agreement with KIA for a \$1,720,500 loan (KIA Loan F16-002) to fund the project.⁶

² *Annual Report of Cumberland Falls Highway Water District to the Kentucky Public Service Commission for the Year Ended December 31, 2021* at 12 and 49.

³ Application at 9.

⁴ Application at 3.

⁵ Application at 3.

⁶ Application at 4.

Cumberland Falls District stated in its application in this case that the construction of Contract 1 of the Project was completed on August 15, 2018 at a cost of \$890,287.90.⁷ Cumberland Falls District further stated that on July 1, 2020, the construction of Contract 2 of the Project was completed at a final cost of \$68,750.⁸ The total Project cost through the completion of these Contracts was \$1,323,997, leaving approximately \$396,502.65 of the proceeds of KIA Loan F16-002 available for use by Cumberland Falls District.⁹

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.¹⁰

"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.¹¹

⁷ Application at 4.

⁸ Application at 4.

⁹ Application at 4.

¹⁰ *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 252 S.W.2d 885 (KY. 1952).

¹¹ *Kentucky Utilities Co. v. Pub. Serv. Comm'n* 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.”¹² 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.¹³ Selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.¹⁴ All relevant factors must be balanced.¹⁵

KRS 278.020(1)(a)(3) further provides that a CPCN is not required if a water district created under KRS Chapter 74 undertakes a waterline extension or improvement project and the following conditions are met: (1) the water district is a Class A or B utility as defined in the uniform system of accounts established in accordance with KRS 278.220; (2) the waterline extension or improvement project will not cost more than \$500,000 or the waterline extension or improvement project will not result in the water district incurring evidence of indebtedness requiring Commission approval under KRS 278.300; and (3) the water district will not increase its rates to its customers.

¹² *Kentucky Utilities Co. v. Pub. Serv. Comm'n* at 890.

¹³ 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).

¹⁴ See *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 390 S.W.2d 168, 175 (Ky. 1965). See also Case No. 2005-00089, *The Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity to Construct a 138 kV Electric Transmission Line in Rowan County, Kentucky* (Ky. PSC Aug. 19, 2005).

¹⁵ Case No. 2005-00089, *East Kentucky Power Cooperative, Inc.* (Ky. PSC Aug. 19, 2005), final Order at 6.

The Uniform System of Accounts provides that a water district with annual water operating revenues of \$750,000 or more is a Class A Water District.¹⁶

Under 807 KAR 5:001E, Section 15(3), a CPCN is not required for an extension in the ordinary course of business, which is defined as:

[E]xtensions 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.

PROPOSED CONTRACT NO. 3 PROJECT

Cumberland Falls District proposed to undertake a new phase of line replacements and reinforcements under the Project pursuant to Contract No. 3. This contract includes the installation along US Highway 25 and KY Highway 90 of 1,450 linear feet of 8-inch PVC water main, 2,640 linear feet of 6-inch PVC water main, 8,380 linear feet of 4-inch PVC water main, 525 linear feet of 3-inch PVC waterline, 440 linear feet of 10-inch high density polyethylene waterline and associated appurtenances and the relocation and upgrading of an existing booster station. Approximately 5,700 feet of aging and undersized water distribution lines will be replaced. Cumberland Falls District stated approximately 20 new customers will be served by the proposed construction and approximately 500 existing underserved customers will directly benefit from improved service from the increased pumping capacity of the relocated booster pump station.

¹⁶ Uniform System of Accounts for Class A/B Water Districts and Associations (Ky. PSC 2002) at 14.

Cumberland Falls District explained that during peak usage periods in the summer, both pumps in the existing booster pump station are continuously running to meet demand.

The total estimated cost of the Contract No. 3 facilities, including administrative, engineering and legal fees is \$760,795.¹⁷ Cumberland Falls District proposed to finance this cost with a contribution of \$25,000 from Whitley County Fiscal Court, a Cleaner Water Program Grant of \$332,959 and \$386,502.65 from the remaining proceeds of KIA Loan F16-002.¹⁸ KIA has approved the use of the residual funds from the KIA loan.¹⁹ Cumberland Falls District has received approval of Kentucky Division of Water for the plans and specifications with respect to sanitary features of design and from the Kentucky Department of Highways for permits for the excavation of public rights-of-way.²⁰ Cumberland Falls District has also stated that construction of the Contract No. 3 facilities will not result in an increase in its rates for water service.²¹

DISCUSSION AND FINDINGS

In Case No. 2017-00268, the Commission found that the Project for line replacement and reinforcement was necessary and did not result in wasteful duplication, meeting the statutory requirements under KRS 278.020(1) for a CPCN and approval was granted for KIA Loan F16-002 to finance the Project.

In this proceeding, Cumberland Falls District seeks approval to use residual funds from the KIA Loan approved in Case No. 2017-00268 to continue the Project pursuant to

¹⁷ Application at 7.

¹⁸ Application at 7.

¹⁹ Application at 5.

²⁰ Application at 5.

²¹ Application at 7.

Contract No. 3, and has requested a declaration that a CPCN is not required to construct the facilities pursuant to Contract No. 3. Cumberland Falls District stated the construction of the Contract No. 3 facilities will replace aging and deteriorating water lines and will immediately improve the quality of water service for approximately 500 existing customers and allow that higher level of service to continue for several decades. Cumberland Falls District explained that the Project will also extend water service to approximately 20 new customers. Cumberland Falls District argued the use of the residual funds is proposed for a lawful object within its corporate purposes, is necessary and appropriate for or consistent with the proper performance 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.

Cumberland Falls District argued it is exempt from the requirement of a CPCN pursuant to KRS 278.020(1)(a)(3) because it is a Class A water district and the utility will not enter into an evidence of indebtedness for proposed Contract No. 3 Project because the project will be funded through the residual amount of a previously approved KIA loan, through funds provided by Whitley County Fiscal Court, and through a grant. Finally, Cumberland Falls District asserted that the proposed Contract No. 3 Project will not result in an increase in customer rates.

The Commission concludes that the use of the residual funds from KIA Loan F16-002 towards Contract No. 3 should be approved because Cumberland Falls District has obtained approval from KIA for use of the residual funds and the construction proposed pursuant to Contract No. 3 is in furtherance of the Project for which the loan was originally obtained. The Commission further concludes that the proposed construction pursuant to

Contract No. 3 not only meets the requirements for exemption from the requirement to obtain a CPCN under KRS 278.020(1)(a)(3), but is also consistent with the purpose and intent of the original Project, which has already been deemed necessary and lacking in wasteful duplication pursuant to statute. Finally, because the Project satisfies KRS 278.020(1)(a)(3), the need for a determination that the project satisfies the regulatory standard of an extension in the ordinary course of business in 807 KAR 5:00E1, Section 15(3) is moot. Therefore, the Commission finds that the construction proposed pursuant to Contract No. 3 does not require a CPCN and that Cumberland Falls District's request to use the surplus of the KIA loan approved in Case No. 2017-00268 should be approved.

IT IS THEREFORE ORDERED:

1. The record in Case No. 2017-00268, including the Post-Case Correspondence, is incorporated by reference into the record of the instant case.
2. Cumberland Falls District's request to use \$396,502.65 of surplus proceeds from the Assistance Agreement and KIA Loan F16-002 towards Contract No. 3 is granted.
3. The use of the surplus proceeds of KIA Loan F16-002 is authorized for the purposes of funding the water main replacement Project and for the construction of the proposed Project pursuant to Contract No. 3 in the application as submitted in this case.
4. Cumberland Falls District's request for a declaration that a further CPCN is not required to construct the facilities proposed pursuant to Contract No. 3 is granted.
5. The Commission's August 14, 2017 Order in Case No. 2017-00268 is modified to the limited extent that the KIA financing approved therein is authorized for the

purposes of funding the water main replacement project described herein and for the construction of the proposed project in the application as submitted in this case.

6. All provisions of the August 14, 2017 Order that are not in conflict with the terms of this Order shall remain in effect.

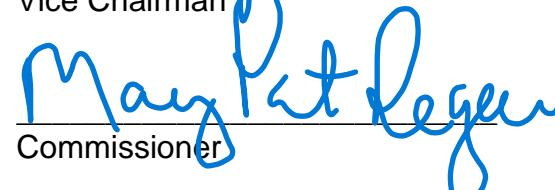
7. This case is closed and removed from the Commission's docket.

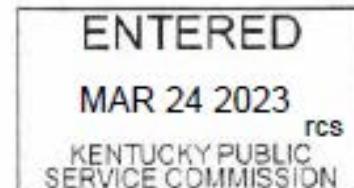
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