

**RE: ELECTRONIC APPLICATION OF THE BRACKEN COUNTY WATER DISTRICT (“BCWD”) REQUEST FOR A CERTIFICATE OF PUBLIC NEED AND CONVENIENCE OR ALTERNATIVELY A DECLARATORY ORDER ESTABLISHING THAT A CERTIFICATE OF PUBLIC NEED AND CONVENIENCE IS NOT NECESSARY; AS TO TRANSFER OF A DEVELOPER’S WATER ASSETS; AND APPROVAL OF THE WATER TRANSFER ASSET CONTRACT, PURSUANT TO KRS 278.020, 501 KAR 5:001(15) &/OR 501 KAR 5:001(19). AND APPLICABLE KY PSC RULINGS AND CASE LAW**

**CASE NUMBER 2024-00222**

**KENTUCKY PUBLIC SERVICE COMMISSION (KPSC)  
FRANKFORT, KENTUCKY 40601  
*Filed electronically w/ KPSC***

**BCWD  
Attn: Mr. Derrick Bach  
1324 Brooksville-Germantown Road  
Brooksville, Kentucky 41004**

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P.O. Box 345  
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**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

**RE: ELECTRONIC APPLICATION OF THE BRACKEN COUNTY WATER DISTRICT ("BCWD") REQUEST FOR A CERTIFICATE OF PUBLIC NEED AND CONVENIENCE OR ALTERNATIVELY A DECLARATORY ORDER ESTABLISHING THAT A CERTIFICATE OF PUBLIC NEED AND CONVENIENCE IS NOT NECESSARY; AS TO TRANSFER OF A DEVELOPER'S WATER ASSETS; PURSUANT TO KRS 278.020, 501 KAR 5:001(15) &/OR 501 KAR 5:001(19). AND APPLICABLE KY PSC RULINGS AND CASE LAW**

**CASE NUMBER 2024-00222**

Comes now the Bracken County Water District, ("BCWD") by and through the chairman of the board of commissioners, Mr. Philip Crawford, and the manager, Mr. Derrick Bach, and through counsel, Mr. Jesse P. Melcher, Esq., and hereby requests an Order approving a certificate of necessity and convenience (CPCN) for authorization of water distribution assets transfer, regarding transfer of assets of the Augusta Brooksville Bracken Industrial Authority ("ABBIA"), and the approval of the transfer of assets, consisting of water lines and connections from the existing water main of BCWD, that parallels the AA (Alexandria to Ashland) Highway, a/k/a KY 9, through the lands of the Augusta Brooksville Bracken County Industrial Authority, ("ABBIA"), through the development of ABBIA, consisting of a water line of @ 5400 feet and its connections and parts as specified in detail below, or alternatively a declaratory Order that a CPCN is not necessary as to the transfer of water utility assets by a developer to a utility.

As grounds for this request, the Bracken County Water District ("BCWD"), does hereby establish as follows:

- A. ABBIA has developed a water line distribution system and desires to gift the water line distribution system and its components to BCWD. ABBIA, has not and does not distribute water; nor has it or does it provide water to the public or to the public for compensation. *See. Affidavit of chairman of Board, of ABBIA, Mr. Earl Bush (Exhibit "B")*. The water distribution system is located next to a BCWD main, parallel to KY 9, AA Highway, for a total line extension through the Augusta Brooksville Bracken County Industrial Authority Park, of approximately 5400 feet of water line and connections.

- B. The project is an approved Kentucky Development Product Initiative grant (“KDPI”), that has monies to pay one-half of the proposed bid estimates, including engineering fees, in the amounts of \$269,207.22 (construction bid cost) and \$64,200.00, (engineering costs/fees); wherein, Augusta Brooksville Bracken County Industrial Authority has paid those costs in full to date.
- C. BCWD requests that the Kentucky Public Service Commission grant a CPCN, or alternatively a declaratory Order that a CPCN is not necessary as the proposed transfer of water assets of ABBIA to BCWD do not require a CPCN.
- D. BCWD requests that the KY PSC Commission recognize the arrangement as a transfer of water distribution assets to the BCWD, by developer and non-utility, Augusta Brooksville Bracken County Industrial Authority (“ABBIA”), pursuant to Commission holding, in Case No 2022-00365. *See. Electronic Application of the Cumberland Falls Highway Water District for a Deviation.*
- E. BCWD further asserts that said transfer of assets by contract does not violate its tariff. BCWD on pages 30 to 38 of its current tariff, outlines its approved manners of line extensions. Essentially, BCWD has a no cost of any application that requires a line extension of less than fifty (50’) feet, and a cost provision with reimbursement for developments that request and/or require extensions over fifty (50’) feet, but no preclusion of accepting and/or contracting for transfer of assets. *See. copies of BCWD tariff, Pages 30- 37 identified as Exhibit “D”, pages 1-7.*
- F. The project has been engineered by Bluegrass Engineering, Inc.; wherein, the project was completed in accordance with the engineering specifications and requirements of Bluegrass Engineering, Inc.
- G. ABBIA agrees (*see. Contract between parties attached hereto, Exhibit “A”*), upon KY Public Service Commission approval of this contract, to transfer all assets of its completed water distribution system constructed from the KY 9 Highway (a/k/a AA Highway) to the Bracken County Water District (“BCWD”), which consists of the following water main distribution system components:
  - i) 5400 feet of 8” PVC Water Main, SDR 17 Class 250;
  - ii) Tapping Sleeve and Valve;
  - iii) Leak Detection Meter;

- iv) 4" Gate Valve & Box x 3;
- v) 8" Gate Valve & Box x 2;
- vi) 40 feet of Steel Casing, Bore and Jack;
- vii) 60 feet of PVC Casing, Open Cut;
- viii) Flush Hydrant Assembly;
- ix) Temporary Blow Off Assembly;
- x) New Customer Meter Set.

#### APPLICABLE LAW

The Kentucky Public Service Commission has established that a CPCN is mandated and necessitated by KRS 278.020(1) before a utility may "...begin the construction of any plant, equipment, property, or facility..." *SEE. KRS. 278.020(1)(a)*

To obtain a CPCN, the utility must demonstrate a need for such facilities and an absence of wasteful duplication. *See. Kentucky Utilities Co. v. Pub. Service Comm'n, 252 S.W. 2d 885 (Ky. 1952).*

"Need" requires:

[A] showing of a substantial inadequacy of existing service involving a customer 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. *See. Kentucky Utilities Co. v. Pub. Service Comm'n, 252 S.W. 2d 885, @890, (Ky. 1952).*

“Wasteful duplication” is defined as “an excess of capacity over need” and “an extensive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties.” *See. Kentucky Utilities Co. v. Pub. Service Comm’n*, 252 S.W. 2d 885, @890, (Ky. 1952). 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 the all reasonable alternatives has been performed. *See. 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)*. Selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication. *See. Kentucky Utilities Co. v. Pub. Service Comm’n*, 390 S.W. 2d 168, @175, (Ky. 1965). All relevant factors must be balanced. *See. Also Case No. 2005-00089, Application of East Kentucky Power Cooperative, Inc. for a CPCN of a 138 kV Electric Transmission Line in Rowan County, Kentucky (Ky. PSC Aug. 19, 2005), final Oder at 6, 18.*

An exception to the CPCN requirement is provided in KRS 278.020(1)(a)(2) for “ordinary extensions of existing systems in the usual course of business.” This exception is further described in 807 KAR 5:001, Section 15(3), which states:

“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 o f 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.”

The Commission has interpreted 807 KAR 5:001, Section 15(3), as stating that no CPCN is required for extensions “that do not result in wasteful duplication of utility plant, do not compete with the facilities of existing public utilities, and do not involve a sufficient capital outlay to materially affect the existing financial condition of the utility involved or to require an increase in utility rates.” *See. Case No. 2000-00481, Application of Northern Kentucky Water District (A) for Authority to Issue Revenue Bonds in the Approximate Amount of \$16,545,000; and (B) a CPCN for the Construction of Water Main Facilities (Ky. PSC, Aug. 30, 2001), Order at 4.*

Pursuant to 807 KAR 5:001, Section 19, the Commission may, upon application by a person substantially affected, “issue a declaratory order... with respect to the meaning and scope of an Order or administrative regulation of the commission or provision of KRS Chapter 278. *See. 807 KAR 501:001, Section 19(10; Case No. 2020-00095, Electronic Application of Kenergy Corp. for a Declaratory Order (Ky. PSC, Mar. 11, 2021), Order at 4-5 (noting that Commission may issue declaratory order, in its discretion, with respect to the meaning and scope of an order, regulation, or statute if a request is made by a person substantially affected).* An application for a declaratory order must “a) Be in writing; b) Contain a complete, accurate, and concise statement of facts upon which the application is based; c) Fully disclose the applicant’s interest; d) Identify all statutes, administrative regulations, and orders to which the application relates; and e) State the applicant’s proposed resolution or conclusion. *See. 807 KAR 5:001, Section 19(2).*

Any factual allegation in an application for a declaratory order must be supported by affidavit or verified. *See. 807 KAR 5:001, Section 19(6).* The Commission “may dispose of an application for a declaratory order solely on the basis of the written submissions filed, *See. 807 KAR 5:001, Section 19(8); Case No. 2020-00095, Electronic Application of Kenergy Corp. for a Declaratory Order (Ky. PSC, Mar. 11, 2021), Order at 4-5 (noting that Commission may issue declaratory order, in its discretion),* or may allow for other actions, including additional discovery, to ensure that the record is complete. *All cited in Case No. 2023-00257 (Ky. PSC Order, Nov 28, 2023,) Electronic Application of Harrison County Water for a CPCN or declaratory Order of exemption for a CPCN as it relates to rehabilitation of five (5) steel towers.*

KRS 278.010(3)(d) defines “Utility” as “The diverting, developing, pumping, distributing, or furnishing of water **to or for the public, for compensation.**”

KRS 278.020(6) states “No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.” *Id.*

KY PSC Commission has recognized that transfer of water line main to a utility by a developer, i.e., does not violate the Kentucky Revised Statutes, and may not violate the utilities tariff, if no tariff provision precluding; and the agreement is filed with the Commission. *See*. Case No 2022-00365. *See. Electronic Application of the Cumberland Falls Highway Water District for a Deviation; Pages 6 & 10 of Order.*

#### ARGUMENT

BCWD after having cited the applicable law, states its tariff does not preclude contractual transfer of assets from a developer to it, and BCWD is desirous of accepting the water distribution assets as part of distribution system of BCWD, if KY PSC approves and/or authorizes. BCWD further asserts that ABBIA is not a utility under the definition of KRS 278.010(3)(d), as it has not and does not provide water to the public for consumption. *See attached affidavit of ABBIA chairman, Earl Bush.*

ABBIA, exists solely to establish maintain and develop an industrial park, and has not and does not provide water as part of its business, but developed the water distribution system to increase developmental prospects in the industrial park. Therefore, BCWD believes this is not a transfer under the definition of KRS 278.020(6), as this is not a transfer from one “**utility**” to another person. *Id.*

BCWD is a utility under the jurisdiction of KY PSC, however, the transfer surrounding this development of a water distribution system by ABBIA, is believed by BCWD to be akin to a contract to acquire a developer’s water distribution assets. BCWD will not expend any significant capital outlay (only administrative and legal expenses), for the ultimate gift of the water line development by ABBIA to BCWD, if



approved by KY PSC. Further, BCWD believes this development is a transfer of water lines by a developer to a utility, as interpreted by KY PSC. See, Electronic Application of Cumberland Falls Highway District for a Deviation, Case No. 2022-00365; *Kreamer v. Harmon*, 336 S.W. 2d 561 (Ky. 1960). *attached contract*.

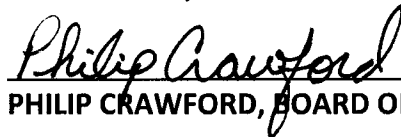
Wherefore, BCWD requests that PSC enter an Order approving a CPCN for the transfer of water utility assets as requested herein, pursuant to KRS 278.020 AND 807 KAR 5:001(15) or alternatively issue a declaratory Order, pursuant 807 KAR 5:001(19) and KRS 278.020, that a CPCN is not needed for the water distribution asset transfer; and approval of the water asset transfer contract.

**CERTIFICATION**

**We, Philip Crawford, Board of Commissioners and Derick Bach, Manager, for the Bracken County Water District, hereby certify that we have read over the foregoing request for a Certificate of Public Convenience and Necessity or alternatively a declaratory order that a CPCN is not necessary, and approval of the water asset contract transfer, to the Kentucky Public Service Commission, and that all averments and statements herein are true and accurate to the best of our knowledge and belief.**



DERICK BACH, MANAGER



PHILIP CRAWFORD, BOARD OF COMISSIONER'S, CHAIRMAN

We, Jennah Otten (print name) and Monick Bice (print name) as two witnesses, state that Philip Crawford and Derick Bach, did in our presence execute their signatures, and affirm and acknowledge its application, concerning BCWD's request for a CPCN or a declaratory order not requiring a CPCN, this the 8<sup>th</sup> day of July, 2024.

Jennah Otten  
WITNESS # 1 (Print Name) Jennah Otten

Monick Bice  
WITNESS # 2 (Print Name) Monick Bice

COMMONWEALTH OF KENTUCKY  
COUNTY OF Bracken

I, Jennah Otten, being a Notary Public in the State of Kentucky at Large, do hereby state that Philip Crawford, Chairman of the Board of Commissioners, of the Bracken County Water District and Derick Bach, manager, who are both personally known to me, have signed, sworn, and acknowledged before me this the 8<sup>th</sup> day of July, 2024.

Jennah Otten  
NOTARY PUBLIC, STATE OF KY AT LARGE

12/28/2027  
MY COMMISSION EXPIRES:  
NOTARY ID: KYNP 84042

Respectfully submitted,

Jesse P. Melcher  
BRACKEN COUNTY WATER DISTRICT,  
ATTORNEY

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