

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC JOINT APPLICATION OF)	
GRAYSON COUNTY WATER DISTRICT AND THE)	
CITY OF CANEYVILLE FOR AN ORDER)	
APPROVING THE TRANSFER OF OWNERSHIP)	
OF THE CITY OF CANEYVILLE'S WATER)	CASE NO.
SYSTEM AND APPROVING GRAYSON COUNTY)	2021-00387
WATER DISTRICT'S ASSUMPTION OF CERTAIN)	
DEBT OBLIGATIONS OF THE CITY OF)	
CANEYVILLE PURSUANT TO THE PROVISIONS)	
OF KRS 278.020, KRS 278.300, AND 807 KAR)	
5:001)	

ORDER

On February 16, 2022, Grayson County Water District (Grayson District) and the city of Caneyville (Caneyville) (collectively, Joint Applicants) filed an application, pursuant to KRS 278.020, KRS 278.300 and 807 KAR 5:001, requesting approval of Grayson District's acquisition of Caneyville, a city-owned water utility, and to assume Caneyville's debt obligations. By Order entered February 25, 2022, the Commission found good cause to continue the proceeding for 60 additional days to June 6, 2022 in order to ensure the orderly review of the application and establish a procedural schedule.

LEGAL STANDARD

At issue is the Commission's approval of the application pursuant to KRS 278.020 as well as Grayson District's assumption of the debt obligations of Caneyville in accordance with KRS 278.300.

Caneyville, as a city-owned water utility, is not subject to Commission jurisdiction.¹ 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.” Grayson District proposes to acquire Caneyville, which is not a utility as defined by KRS 278.010(3), but, upon approval of this transaction, the system which Caneyville 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 Grayson District’s acquisition of Caneyville.

To obtain a CPCN, the utility must demonstrate a need for such facilities and an absence of wasteful duplication.²

“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.

¹ See KRS 278.010(3).

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

[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.³

“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.”⁴ Pursuant to KRS 278.020(1)(a), the Commission must determine that public convenience and necessity require the services that Grayson District will provide to the former Caneyville 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.⁵

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

³ *Kentucky Utilities Co. v. Public Service Commission* 252 S.W.2d 885, 890 (Ky. 1952).

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

⁵ See *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* S.W.3d 488, 358 (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.⁶

As part of the acquisition, Grayson District proposed to assume the obligations of Caneyville 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:

after 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

Grayson District. Grayson District was formed on July 1, 1974,⁷ and acts pursuant to KRS Chapter 74. As of December 31, 2021, Grayson District had approximately 7,078 residential customers.⁸

Grayson District has 14 employees.⁹ Of those 14 employees, 11 are certified water distribution system operators with valid water certification licenses issued by the Kentucky

⁶ 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).

⁷ *Annual Report of Grayson County Water District to the Public Service Commission for the Calendar Year Ended December 31, 2020* (2020 Annual Report) at 9.

⁸ *Joint Application* at 5.

⁹ 2020 Annual Report at 13.

Board of Certification of Water.¹⁰ Three are certified as both Water Distribution System Operators and as Water Treatment Operators. Five employees are certified as only Water Distribution System Operators. The remaining three certified employees are certified as only Water Treatment Operators. The number of employees holding various water operating certifications is proof that Grayson District has the technical ability to provide reasonable service to its own customers.

Caneyville. Caneyville owns and operates water distribution facilities as well as wastewater collection and treatment facilities.¹¹ As of December 31, 2021, Caneyville had approximately 774 residential customers.¹² Caneyville currently purchases its water through a wholesale agreement with Grayson District.¹³

Due to lack of employee retention that began approximately five years ago, Caneyville has been contracting water services and using stop gap measures until 2021 when Grayson District water operators took over responsibilities under the Operating Agreement.¹⁴ Grayson District has consistently maintained a water loss percentage under 15 percent.¹⁵

¹⁰ Joint Application at 18, and Exhibit 20.

¹¹ Joint Application at 5.

¹² Joint Application at 5.

¹³ Joint Application at 5.

¹⁴ First Response to Commission Staff's First Request for Information at 7–8.

¹⁵ Joint Application, Exhibit 10, at 4–1.

PROPOSED ACQUISITION

Prior to the proposed acquisition, on April 12, 2021, the Joint Applicants entered into an Operating Agreement and Grayson District began managing, operating, repairing, and maintaining the City's Water System using Grayson District's employees.¹⁶

On September 15, 2021, the Joint Applicants entered into an Asset Purchase Agreement.¹⁷ According to the Asset Purchase Agreement, Caneyville is to transfer to Grayson District and Grayson District is to accept Caneyville assets, including real and personal property.¹⁸ There will not be an exchange of cash for acquiring Caneyville's water system.¹⁹ However, Grayson District will assume a payment of \$1,422,500 of outstanding debt obligations incurred by Caneyville for the purposes of constructing extensions and improvements to its water system.²⁰

DISCUSSION

The Joint Applicants filed several financial documents in support of the application. Grayson District provided audit statements for both the year ending in 2019 and 2020.²¹ In addition, Grayson District provided debt information for the utility as well as the information about the assumption of Caneyville's debts. The information substantiated Grayson District's assertion that it will be able to continue to meet all debt obligations.²²

¹⁶ Joint Application, paragraph 41, and Exhibit 5.

¹⁷ Joint Application, Exhibit 6.

¹⁸ Joint Application, Exhibit 6, page 3–6.

¹⁹ Joint Application, Exhibit 6.

²⁰ Joint Application, Exhibit 6, page 6–7.

²¹ Joint Application, Exhibit 14.

²² Joint Application, Exhibit 11 and Exhibit 15.

Grayson District will be acquiring assets with a Book Value of \$3,870,014 while incurring \$1,422,500 in debts.²³ Based upon the case record and pursuant to KRS 278.300, the Commission finds that the Joint Applicants have established that Grayson District will have the financial abilities to provide reasonable, reliable service to its customers. The Commission notes that Grayson District was granted a 5.25 percent rate increase in Case No. 2021-00191.²⁴ With the increased customer count and recent rate case, the increase in customer revenue can be expected to offset the increased debt obligations, so no rate increase would result from the acquisition.

Additionally, the acquisition will result in significant rate savings to the customers of Caneyville. While the current rates of Grayson District will not be impacted, many customers of Caneyville will experience a rate decrease.²⁵ The average Caneyville customer consumes 2,900 gallons of water per month. Based on an “inside city” Caneyville designation, an inside city customer will see their average monthly bill decrease from \$34.06 to \$33.74, a decrease of 32 cents, or approximately 0.95 percent.²⁶ Based on an “outside city” Caneyville designation, an outside city customer would see their average monthly bill decrease from \$42.10 to \$33.74, a decrease of \$8.36, or approximately 19.86 percent.²⁷

²³ Joint Application, Exhibit 16.

²⁴ Case No. 2021-00191, *Electronic Application of Grayson County Water District for a Rate Adjustment Pursuant to 807 KAR 5:076* (Ky. PSC December 14, 2021), Order.

²⁵ Joint Application, Exhibit 26.

²⁶ Joint Application, Exhibit 26.

²⁷ Joint Application, Exhibit 26.

Grayson District provided evidence that its employees have the requisite qualifications and certifications to operate the water system. Further, Grayson District has operated Caneyville's water system since April 2021 using Grayson District's employees. For this reason, the Commission finds that Grayson District established that it has the technical and managerial ability to provide reasonable service if the proposed transaction is approved.

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 Grayson District 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 shall be approved.

The Joint Applicants have provided sufficient evidence that Grayson District's acquisition of Caneyville and assumption of Caneyville's debts and obligations will not impair Grayson District'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), Caneyville is granted a CPCN to provide utility service to and for the public.

2. The application for acquisition is approved.
3. Grayson District's acquisition of the indebtedness of Caneyville 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 the satisfactory completion of the FY20 Water Rehab Project, Grayson District shall file notice of completion of the project.
6. Within 14 days of Grayson District finalizing the assumption of the United States Department of Agriculture, Rural Development loan, Grayson District shall provide updated loan paperwork to the Commission and note that it is a post-case filing for this case.
7. This case is now closed and removed from the Commission's docket.

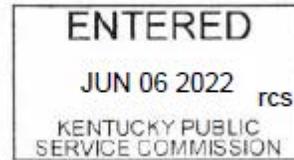
PUBLIC SERVICE COMMISSION



Chairman

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ATTEST:



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