

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF CORINTH	)	CASE NO.
WATER DISTRICT FOR AUTHORIZATION TO	)	2021-00465
ENTER INTO A FINANCIAL OBLIGATION	)	

ORDER

On December 22, 2022, Corinth Water District (Corinth District) tendered an application, pursuant to KRS 278.300, requesting retroactive confirmation of authority to enter into a \$2,020,000 Lease Agreement (Lease) with the Kentucky Bond Corporation (KBC). The Commission notified Corinth District by letter dated December 28, 2021, that its application was rejected for failure to satisfy the minimum filing requirements set forth in certain Commission regulations. Corinth District subsequently cured the filing deficiencies, and its application was deemed filed as of January 18, 2022.

On January 25, 2022, the Commission found that Corinth District's application could not be adjudicated within the 60 days from the filing date as required by KRS 278.300(2) due to the retroactive approval request for indebtedness to which Corinth District had already committed. Additionally, the application revealed that the utility had also entered into indebtedness for a truck for which the Commission did not approve. Therefore, the Commission found that good cause existed to continue the application beyond the 60-day period specified in KRS 278.300(2) so that the Commission could conduct a thorough review of the transactions. The Commission also established a procedural schedule for the orderly processing of the case in the January 25, 2022 Order.

There are no intervenors in this case and Corinth District replied to one request for information. The matter is now submitted to the Commission for a decision based upon the evidentiary record.

### LEGAL STANDARD

KRS 278.300 requires Commission approval before a utility may “issue any securities or evidences of indebtedness, or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person.”<sup>1</sup> The legal standard contained in KRS 278.300(3) establishes the purview of Commission review, stating:

The commission shall not approve any issue or assumption unless, 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.

Additionally, KRS 278.300(8) establishes that KRS 278.300 does not apply if the proposed issuance of securities or indebtedness is payable at periods of not more than two years from the issuance date and any renewals of such notes do not exceed six (6) years from the initial issuance date.

### PROPOSED FINANCING

Pursuant to KRS 278.300 and 807 KAR 5:001, Corinth District requested retroactive approval of the Lease with KBC. The retroactive approval was requested as the Lease was entered into on July 23, 2021, or five months prior to the application date.

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<sup>1</sup> KRS 278.300(1).

Corinth District, at the approval of its board, entered into the Lease in the amount of \$2,020,000 in order to refinance prior United States Department of Agriculture (USDA) obligations and transaction costs, secured by its district revenues.<sup>2</sup> The Lease resulted in debt service savings of \$307,517 to the district.<sup>3</sup> The prior USDA obligations were approved in the following cases:

<u>Loan/Bond Series</u>	<u>Original Amount</u>	<u>Interest</u>	<u>Case Number Approved</u>
Water District Revenue Bonds, Series 1998	\$526,000	4.750%	1998-00266 <sup>4</sup>
Water District Revenue Bonds, Series 2002	\$485,000	4.625%	2002-00202 <sup>5</sup>
Water District Revenue Bonds, Series 2005	\$1,532,000	4.125%	2005-00172 <sup>6</sup>

Corinth District stated that the utility mistakenly determined that the financing was not subject to Commission approval because the prior USDA obligations were held by the federal government.<sup>7</sup> Therefore, Corinth District determined that the Lease was in the

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<sup>2</sup> Application at 3.

<sup>3</sup> Application at 1.

<sup>4</sup> Case No. 1998-00266, *In the Matter of The Application of Corinth Water District, a Water District Organized Pursuant to Chapter 74 of the Kentucky Revised Statutes, on Grant County, Kentucky, for (1) A Certificate of Public Convenience and Necessity to Construct Waterworks Distribution System Improvements, and (2) the Approval of the Proposed Plan of Financing Said Improvements* (Ky. PSC June 10, 1998).

<sup>5</sup> Case No. 2002-00202, *Application of Corinth Water District, a Water District Organized Pursuant to Chapter 74 of the Kentucky Revised Statues, in Grant County, Kentucky, for (1) A Certificate of Public Convenience and Necessity, Authorizing and Permitting Said Corinth Water District to Construct Water Distribution System Improvements, Consisting of 6" PVC Pipe, and 3" PVC Pipe, and 3" PVC Pipe, Totaling Approximately 252,000 Linear Feet for Service Lines and Related Appurtenances, and (2) the Approval of the Proposed Plan of Financing Said Improvements* (Ky. PSC July 1, 2002).

<sup>6</sup> Case No. 2005-00172, *The Application of Corinth Water District for a Certificate of Public Convenience and Necessity to Construct and Finance Pursuant to KRS 278.023*, (Ky. PSC May 18, 2005).

<sup>7</sup> Application at 2.

public interest and accomplished the purpose of strengthening the financial condition of the district by producing debt service savings and that the Lease was necessary, appropriate for and consistent with the proper performance by the district of its service to the public and would not impair its ability to perform that service.<sup>8</sup>

Corinth District stated that it did consult with an attorney prior to committing to the Lease.<sup>9</sup> Corinth District provided an opinion of Lessee's counsel that was issued in conjunction with the Lease which stated that, "All consents, approvals or authorizations of any governmental entity and all filings and notices required on the part of the Lessee in conjunction with the authorization, execution and delivery of the Lease and the consummation of the transactions contemplated thereby have been obtained and are in full force and effect."<sup>10</sup> Corinth District stated that their board of commissioners ultimately approved the commitment taking into account the opinion of Lessee's counsel.<sup>11</sup> Corinth District claimed that it now understands that the financing is subject to Commission approval, intends to take steps to prevent omissions from occurring, and will seek Commission approval before entering any obligations in the future.<sup>12</sup>

As a result of this incidence, Corinth District noted the following steps the utility intends to take or has taken to prevent future violations:<sup>13</sup>

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<sup>8</sup> Application at 2-3.

<sup>9</sup> Corinth District's Response to Commission Staff's First Request for Information (Staff's First Request) (filed Feb. 11, 2022), Item 1.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Application at 2.

<sup>13</sup> Corinth District's Response to Staff's First Request, Item 4.

1. The General Manager will attend management training conducted by the Commission;
2. The board of commissioners will attend Commission conducted training;
3. Corinth District will seek guidance from its legal counsel for any future debt issuance; and
4. Corinth District will reach out to Commission staff with any questions.

DISCUSSION AND FINDINGS

Corinth District is a water utility providing service to approximately 1,196 customers in Grant, Harrison, and Pendleton counties, Kentucky.<sup>14</sup> Regarding Corinth District, the Commission notes that Corinth District was ordered to file a general rate adjustment in Case No. 2020-00083<sup>15</sup> and filed an application for a rate adjustment in Case No. 2021-00425.<sup>16</sup>

Corinth District's 2020 annual water loss was 24.9483 percent.<sup>17</sup> The cost of Corinth District's water loss at 24.9483 percent is approximately \$70,720<sup>18</sup> Commission

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<sup>14</sup> *Annual Report of Corinth District to the Public Service Commission (Annual Report) for the Year Ending December 31, 2020* at 12 and 52.

<sup>15</sup> Case No. 2020-00083, *Purchased Water Adjustment Filing of Corinth Water District* (Ky. PSC Mar. 30, 2020).

<sup>16</sup> Case No. 2021-00425, *Electronic Application of Corinth Water District for a Rate Adjustment Pursuant to 807 KAR 5:076* (Ky. PSC Nov. 29, 2021).

<sup>17</sup> 2020 Annual Report at 60.

<sup>18</sup>

	Purchased Water	Purchased Power	Total
2020 Reported Expenses	\$ 278,138	\$ 5,329	\$ 283,467
Total Water Loss	24.9483%	24.9483%	24.9483%
Excess Cost	\$ 69,391	\$ 1,329	\$ 70,720

regulation 807 KAR 5:066(6)(3) states that, for ratemaking purposes, a utility’s water loss shall not exceed 15 percent of total water produced and purchased, excluding water consumed by a utility in its own operations. Reduction of Corinth District’s unaccounted-for water loss to 15 percent would result in an approximate \$28,200 decrease to its cost of water and associated purchased power.<sup>19</sup>

In reviewing the application, the Commission notes that Corinth District lists, in its long-term debt, a loan for which approval was not sought with a balance of \$10,717 obtained in 2020 with Huntington Bank, for the purchase of a pick-up truck.<sup>20</sup> According to the auditor’s report, this loan was signed on March 13, 2017, with initial terms of 75 months for an initial amount of \$23,636 at an annual interest rate of 7.0744 percent.<sup>21</sup>

The Commission finds that although the proposed financing results in a savings, the legal standards established in KRS 278.300 to approve the Lease are not met. KRS 278.300(1) requires Commission approval occur *prior* to the issuance of any evidence of indebtedness.<sup>22</sup> Corinth District seeks retroactive approval for an action the utility took months prior to its application for Commission approval. The district cannot

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<sup>19</sup>

	Purchased Water	Purchased Power	Total
2020 Reported Expenses	\$ 278,138	\$ 5,329	\$ 283,467
Multiplied by: Water Loss in Excess of 15 Percent	9.9483%	9.9483%	9.9483%
Excess Cost	\$ 27,670	\$ 530	\$ 28,200

<sup>20</sup> Corinth District 2020 Audit Report at 18.

<sup>21</sup> *Id.*

<sup>22</sup> KRS 278.300(1) reads, “No utility shall issue any securities or evidence of indebtedness, or assume any obligation or liability in respect to the securities or evidence of indebtedness of any other person *until* it has been authorized to do so by order of the commission.” (Emphasis added).

ask for forgiveness when permission for the indebtedness was required. The Commission, on its own merit, will establish a docket for an investigation for failure to comply with KRS 278.300 finding that a prima facie case exists for both the utility and the board of commissioners. This investigation will also evaluate Corinth District's proposed measures to prevent future violations and past and future Commissioner trainings.

IT IS THEREFORE ORDERED that:

1. Corinth District's request for retroactive confirmation of authority to enter into a \$2,020,000 Lease with the KBC is denied.
2. The Commission shall establish a docket to investigate Corinth District and its board of commissioners for an alleged violation of KRS 278.300.
3. This case is closed and removed from the Commission's docket.

By the Commission



ATTEST:

  
Executive Director



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