

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BLUEGRASS)	
WATER UTILITY OPERATING COMPANY, LLC)	CASE NO.
FOR CERTIFICATES OF CONVENIENCE AND)	2022-00104
NECESSITY FOR PROJECTS AT THE)	
DELAPLAIN SITE)	

ORDER

The Commission reopened this case by Order issued March 18, 2024. On March 30, 2023, the Commission issued a final Order granting the application of Bluegrass Water Operating Company, LLC (Bluegrass Water) for a Certificate of Public Convenience and Necessity (CPCN) to construct improvements to its Delaplain wastewater treatment facility (Delaplain) in Scott County, Kentucky. On December 20, 2023, Bluegrass Water notified the Commission pursuant to the final Order that the total cost of the entire project had materially increased from \$609,900 to \$1,322,958 due to unforeseen subsurface conditions onsite and sought a deviation from the project plans.¹ The Commission found that this cost change constituted a material increase and reopened the case to determine if the changes to the proposed projects were still the least-cost reasonable option for meeting needs related to remedying sewer treatment

¹ Ordering Paragraph 2 Notice and Request for Approval Pursuant to Ordering Paragraph 3 (Notice) (filed Dec. 20, 2023) at 2–3.

plant effluent exceedances. Bluegrass Water responded to one additional request for information,² and this matter stands ready for a decision based on the written case record.

LEGAL STANDARD

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.³ To obtain a CPCN, the utility must demonstrate a need for such facilities and an absence of wasteful duplication.⁴

Bluegrass Water has already established a need to improve the Delaplain system to mitigate effluent exceedances and meet its obligations to the Division of Water.⁵

“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.”⁶ To demonstrate that a proposed facility does not result in wasteful duplication, the Commission has held that the applicant must demonstrate that a thorough review of all reasonable alternatives has been performed.⁷ Although cost is a factor, selection of a proposal that ultimately costs more than an

² Bluegrass Water’s Response to Commission Staff’s Fifth Request for Information (Staff’s Fifth Request) (filed Apr. 15, 2024).

³ KRS 278.020(1). Although the statute exempts certain types of projects from the requirement to obtain a CPCN, the exemptions are not applicable.

⁴ *Kentucky Utilities Co. v. Pub. Serv. Comm 'n*, 252 S.W.2d 885 (Ky. 1952).

⁵ Order (Ky. PSC Mar. 30, 2023) at 9.

⁶ *Kentucky Utilities Co.*, 252 S.W.2d at 890.

⁷ Case No. 2005-00142, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky* (Ky. PSC Sept. 8, 2005), Order at 11.

alternative does not necessarily result in wasteful duplication.⁸ All relevant factors must be balanced.⁹

BACKGROUND

The improvements to the Delaplain facility proposed by Bluegrass Water and approved by the Commission included (1) installation of a moving bed biofilm reactor (MBBR) treatment system intended to reduce the amount of ammonia and biochemical oxygen demand (BOD) below permitted levels; and (2) a polymer feed and tertiary filter to improve the facility's ability to settle fine solids. Bluegrass Water provided estimated costs of installing these systems, as well as estimated costs of several alternative measures considered for remedying these effluent exceedances. The final Order in this case included the following ordering paragraphs:

2. Bluegrass Water shall immediately notify the Commission upon knowledge of any material changes to the project, including, but not limited to, a material increase in costs and any significant delays in construction.

3. Any material deviation from the construction approved by this Order shall be undertaken only with the prior approval of the Commission.¹⁰

Bluegrass Water's deviation request stated that the total cost of the entire project had increased from \$609,900 to \$1,322,958.¹¹ Bluegrass Water stated that the increase was attributable to the following requirements identified by its selected contractor: (1) geotech

⁸ See *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 390 S.W.2d 168, 175 (Ky. 1965). See also Case No. 2005-00089, *Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity for the Construction of a 138 kV Electric Transmission Line in Rowan County, Kentucky* (Ky. PSC Aug. 19, 2005), final Order.

⁹ Case No. 2005-00089, Aug. 19, 2005 final Order at 6.

¹⁰ Order (Ky. PSC Mar. 30, 2023) at 12–13.

¹¹ Notice at 2.

boring revealed that the bearing elevations for the filter building would need to be lowered to the underlying bedrock due to the soil quality; (2) the height of the filter building needed to be raised in order to properly remove and perform maintenance on the filter disks within the building; and (3) relocation of the filter building because it was located within a flood zone, which necessitated a higher elevation, a pump station, a new valve vault, and additional piping.¹² Bluegrass Water also noted the effect of “increased cost of materials and labor in the economic and business sector from the COVID-19 pandemic.”¹³

Bluegrass Water provided cost-benefit analyses for the proposed projects and project alternatives,¹⁴ updating the analyses found in the final Order.¹⁵

DISCUSSION AND FINDINGS

Having considered the matter and all evidence in the record, the Commission finds that Bluegrass Water’s request for a deviation from the plans proposed in its CPCN application should be granted. Updated cost-benefit analyses demonstrated that the proposed projects, as modified, are still the least-cost reasonable alternative to correct effluent exceedances when compared to other options.¹⁶ With the exception of the much more expensive alternative of connecting to the city of Georgetown sewer system, the other ways of addressing the effluent exceedances were similarly affected by subsurface and elevation issues as well as post-COVID-19 economic factors.¹⁷

¹² Notice at 2–3.

¹³ Bluegrass Water’s Response to Staff’s Fifth Request, Item 2(a).

¹⁴ Bluegrass Water’s Response to Staff’s Fifth Request, Item 2(a).

¹⁵ Order (Ky. PSC Mar. 30, 2023) at 10–11.

¹⁶ Bluegrass Water’s Response to Staff’s Fifth Request, Item 2(b).

¹⁷ Bluegrass Water’s Response to Staff’s Fifth Request, Item 2(b).

IT IS THEREFORE ORDERED that:

1. Bluegrass Water's request for a deviation from the plans approved in the Commission's final Order is granted.

2. Bluegrass Water's deviation from the original plans submitted in its CPCN application is limited to changes described in the Notice and Bluegrass Water's Response to Staff's Fifth Request.

3. All other provisions of the final Order not in conflict with this Order remain in effect.

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

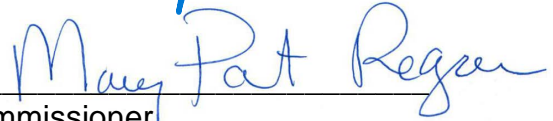
PUBLIC SERVICE COMMISSION



Chairman



Vice Chairman



Commissioner

ENTERED
MAY 09 2024 bsb
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

*R. Brooks Herrick
Dinsmore & Shohl, LLP
101 South Fifth Street
Suite 2500
Louisville, KENTUCKY 40202

*David Giesel
Dinsmore & Shohl, LLP
101 South Fifth Street
Suite 2500
Louisville, KENTUCKY 40202

*Bluegrass Water Utility Operating Company, LLC
1630 Des Peres Road, Suite 140
St. Louis, MO 63131

*Edward T Depp
Dinsmore & Shohl, LLP
101 South Fifth Street
Suite 2500
Louisville, KENTUCKY 40202