

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BLUEGRASS)	
WATER UTILITY OPERATING COMPANY, LLC)	
FOR A CERTIFICATE OF PUBLIC CONVENIENCE)	CASE NO.
AND NECESSITY FOR THE INSTALLATION OF)	2022-00216
MONITORING EQUIPMENT AND FOR A)	
CORRESPONDING LIMITED WAIVER OF DAILY)	
INSPECTION REQUIREMENTS)	

ORDER

On August 22, 2023, Bluegrass Water Utility Operating Company (Bluegrass Water) filed a motion for partial rehearing, pursuant to KRS 278.400, of the Commission's August 2, 2023 Order which denied Bluegrass Water's Certificate of Public Convenience and Necessity (CPCN) application and granted Bluegrass Water's request for a deviation for the daily inspection requirements found in 807 KAR 5:071, Section 7(4).

LEGAL STANDARD

Under KRS 278.400, which establishes the standard of review for rehearing motions, rehearing is limited to new evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when "the evidence presented leaves no room for difference of opinion among reasonable minds."¹ An Order can only be unlawful if it violates a state or federal statute or

¹ *Energy Regulatory Comm'n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

constitutional provision.² By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

BACKGROUND

Bluegrass Water's CPCN application sought approval for installation of remote monitoring systems at 13 wastewater treatment facilities. Bluegrass Water also sought a deviation from 807 KAR 5:071, Section 7(4) daily physical inspection requirements to reduce expenses, as remote monitoring equipment made daily in-person inspections redundant. Commission Staff requested information pertaining to the number of cellular communications interruptions at facilities which already had remote monitoring equipment installed, since Bluegrass Water indicated a need for satellite communications capabilities as a backup communication method for remote monitoring. Bluegrass Water provided a list which included facilities for which it was seeking to install new remote monitoring equipment.³

Commission Staff further inquired about this discrepancy, and Bluegrass Water responded that with the exception of one facility that was being transferred to a municipality, remote monitoring equipment had already been installed at all the facilities

² *Public Service Comm'n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm'n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

³ Bluegrass Water's Response to Commission Staff's Fourth Request for Information (filed Feb. 8, 2023), Item 1(b).

the CPCN application sought approval for.⁴ In its August 2, 2023 Order, the Commission denied the CPCN on the basis that a CPCN cannot be granted for construction that had already been completed. However, the Commission granted the deviation from 807 KAR 5:071, Section 7(4) daily physical inspection requirements, finding that daily in-person inspections were unnecessary due to the use of remote monitoring, and approve a three-day per week physical inspection plan.

The present motion was accompanied by a supplemental response to data requests, indicating that Bluegrass Water was once again in error, and remote monitoring equipment had not been installed at its three nondischarging facilities, Carriage Park, Arcadia Pines, and Marshall Ridge.⁵ Bluegrass Water further stated that “nondischarging systems that have no substantial mechanical equipment creating an urgent need for remote monitoring, the Company had determined that it was not as operationally urgent to install equipment at those sites, yet.”⁶ Bluegrass Water seeks rehearing of its CPCN application as to those three facilities, as well as application of the deviation from 807 KAR 5:071, Section 7(4) upon installation of the remote monitoring equipment.

DISCUSSION AND FINDINGS

Having considered the motion and all evidence in the record, the Commission finds that Bluegrass Water’s motion for partial rehearing should be granted. Although the new evidence that the three nondischarging facilities did not have remote monitoring

⁴ Bluegrass Water’s Response to Commission Staff’s Fifth Request for Information (Staff’s Fifth Request) (filed May 26, 2023), Item 1(a).

⁵ Bluegrass Water’s Supplemental Response to Staff’s Fifth Request (filed Aug. 22, 2023), Item 1(a).

⁶ Bluegrass Water’s Supplemental Response to Staff’s Fifth Request, Item 1(a).

equipment was readily discoverable, omission of this fact is material to the outcome of this case, since the Order denying the CPCN was based on the stated fact that the equipment had been installed at all facilities. Bluegrass Water's statement in its motion that remote monitoring equipment at these nondischarging facilities was not as urgent raises the factual question of whether this equipment is necessary at these facilities and Commission Staff will require additional information from Bluegrass Water. Until a CPCN is granted and remote monitoring equipment is installed, daily in-person inspections under 807 KAR 5:071, Section 7(4) should continue at the three nondischarging facilities.


IT IS THEREFORE ORDERED that:

1. Bluegrass Water's motion for partial rehearing is granted solely on the issue of whether a CPCN should be granted for remote monitoring equipment installation at its Carriage Park, Arcadia Pines, and Marshall Ridge wastewater treatment facilities.

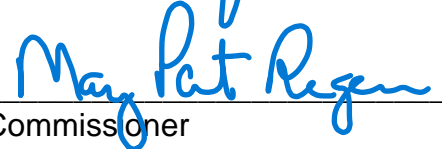
2. Daily in-person inspections under 807 KAR 5:071, Section 7(4) should continue at the Carriage Park, Arcadia Pines, and Marshall Ridge wastewater treatment facilities until a CPCN is granted and remote monitoring equipment is installed.

3. The deviation from 807 KAR 5:071, Section 7(4) granted in the Commission's August 2, 2023 Order shall remain in effect for all facilities where installation of remote monitoring equipment has been completed.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
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