

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF MCCREARY)	
COUNTY WATER DISTRICT FOR)	
AUTHORIZATION TO EXECUTE A)	
SUPPLEMENTAL ASSISTANCE AGREEMENT)	CASE NO.
WITH THE KENTUCKY INFRASTRUCTURE)	2022-00247
AUTHORITY TO INCREASE THE AMOUNT)	
BORROWED UNDER AN EXISTING ASSISTANCE)	
AGREEMENT AND FOR APPROVAL OF)	
CHANGES TO A PLAN OF CONSTRUCTION)	

ORDER

On January 16, 2021 McCreary County Water District (McCreary District) applied for a Certificate of Public Convenience and Necessity (CPCN) for a \$3,244,500 sewer system extension project and for approval of its plan for financing the project.¹ By Commission Order, on March 11, 2021, and as amended on March 24, 2021, McCreary District was granted a CPCN to proceed with the project (Project) to extend its existing sewer system from Stearns, Kentucky, northwest along Kentucky Highway 92 to the Smithtown area of McCreary County, through the installation of 28,750 linear feet of 1.5-inch high density polyethylene force main; 28,286 linear feet of 2-inch polyvinyl chloride (PVC) force main; 7,185 linear feet of 3-inch PVC force main; 10,399 linear feet of 4-inch PVC force main; 17,300 linear feet of 4-inch PVC gravity sewer main; and 240 grinder

¹ Case No. 2020-00399 *Electronic Application of McCreary County Water District for Authorization to Execute an Assistance Agreement with the Kentucky Infrastructure Authority and for A Certificate of Public Convenience and Necessity to Construct the Sanitary Sewer Collection System Expansion Phase 1 Project* (filed Jan. 16, 2021).

pump stations.² Funding for this project consisted of a \$3,244,500 loan from the Kentucky Infrastructure Authority (KIA).

On August 11, 2022 McCreary District filed an application for authority to execute a supplemental assistance agreement with the KIA to increase the amount of an existing loan from \$3,244,500 to \$3,568,960 and to approve certain changes to its plan of construction for which the Commission issued its prior CPCN in Case No. 2020-00399.

LEGAL STANDARD

The Commission's standard of review for a request for a CPCN is well settled. 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 except as provided in KRS 278.020(1) and (2) and 807 KAR 5:001, Section 15(3), which are provisions not applicable to this matter. To obtain a CPCN, a utility must demonstrate a need for such facilities and an absence of wasteful duplication.³

"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.

[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.⁴

² Case No. 2020-00399, *McCreary County Water District* (Ky. PSC Mar. 11, 2021), final Order and (Ky. PSC Mar. 24, 2021), Order.

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

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

“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.”⁵ 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 all reasonable alternatives has been performed.⁶ Selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.⁷ All relevant factors must be balanced.⁸

KRS 278.300 requires Commission authorization before a utility may “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.”⁹ KRS 278.300(3) establishes the legal standard and clarifies the scope 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 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.

⁵ *Kentucky Utilities Co. v. Public Service Comm’n*, 252 S.W.2d 885 (Ky. 1952) at 890.

⁶ 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).

⁷ See *Kentucky Utilities Co. v. Public Service 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.

⁸ Case No. 2005-00089, *East Kentucky Power Cooperative, Inc.* (Ky. PSC Aug. 19, 2005), final Order at 6.

⁹ KRS 278.300(1).

DISCUSSION

After the issuance of the CPCN for the Project in Case No. 2020-00399, McCreary District determined that the addition of a pump station near the intersection of Kentucky Highway 92 and Kentucky Highway 701 was necessary to hydraulically break the pressure from the individual residential grinder stations and to re-pump effluent at a lower pressure to McCreary District's treatment facility.¹⁰ McCreary District stated that this will improve the system's efficiency and adding the pump station will permit McCreary District to link more customers together within a pod without building up higher system pressures.¹¹ The estimated cost of the pump station is \$131,500.¹² McCreary District has purchased a small tract of land near the intersection of Kentucky Highway 701 and Harper Road on which to place the proposed pump station.¹³ As a result of the addition of the pump station and a smaller than expected number of persons requesting service, the estimated annual cost of operation of the Project's proposed facilities is now \$8,000.¹⁴

McCreary District stated it has also faced substantial increased costs and changes in project materials, including the grinder stations, due to the volatile market and material shortages.¹⁵ McCreary District has also requested changes in some of the project materials to extend the life or improve the efficiency of the proposed facilities.¹⁶ These

¹⁰ Application at 8.

¹¹ Application at 8.

¹² Application at 8.

¹³ Application at 8.

¹⁴ Application at 9.

¹⁵ Application at 10.

¹⁶ Application at 10.

changes in the construction plans and increases in material costs have resulted in the increased cost estimate of \$3,568,960.¹⁷

On March 30, 2021, McCreary District executed Assistance Agreement 20A-047 to borrow \$3,244,500 from KIA's Fund A Infrastructure Revolving Loan Program to finance the Project's original cost. It now proposes to enter a supplemental assistance agreement with KIA to borrow an additional \$324,460 to address the project's increased cost.¹⁸ McCreary District will execute a supplemental assistance agreement with KIA that provides for the additional loan amount but stated that all other terms of the adjusted loan will remain unchanged.¹⁹

FINDINGS

The Commission, having reviewed the evidence of record and being otherwise sufficiently advised, finds that the proposed changes in McCreary District's construction plans will not result in wasteful duplication of existing facilities. The proposed changes in McCreary District's construction plan do not conflict with any existing certificates or services of any other utility operating in the area. Public convenience and necessity require the proposed changes to McCreary District's construction plan, which will allow McCreary District to provide reliable and adequate sewer collection service to its customers. Kentucky Department of Water has approved the updated plans and specifications for this proposed project. The proposed supplemental assistance agreement with KIA is necessary, is appropriate for, and consistent with the proper

¹⁷ Application at 10.

¹⁸ Application at 6. The Commission notes the application makes reference to both \$324,450 and \$324,460 in different places in the application, and the actual additional funds is \$324,460.

¹⁹ Application at 11.

performance of McCreary District's service to the public and will not impair McCreary District's ability to perform that service, and is reasonably necessary and appropriate for such purpose. The project will be funded by a KIA Loan and supplemental assistance agreement, for total financing of \$3,568,960. The supplemental assistance agreement with KIA will provide an additional loan amount of \$324,460, but all other terms of the adjusted loan will remain unchanged. McCreary District's application does not include a proposal to adjust rates.

IT IS THEREFORE ORDERED that:

1. McCreary District's proposed changes to its construction plan for the proposed Project as set forth in the application are approved.
2. McCreary District is authorized to amend its existing loan agreement with the KIA for a total amount not to exceed \$3,568,960.
3. McCreary District is authorized to use the proceeds of its \$3,568,960 loan from KIA for the purposes set forth in its original and amended applications.
4. McCreary District shall obtain approval from the Commission prior to performing any additional construction not expressly approved by this Order.
5. McCreary District shall require construction to be inspected under general supervision of a licensed professional engineer with a Kentucky registration in civil or mechanical engineering to ensure that the construction work is done in accordance with the contract drawings and specifications and in conformance with best practices of the construction trades involved in the project.
6. McCreary District shall file with the Commission documentation of the total cost of the project within 60 days of the date that construction authorized under the CPCN

granted in Case No. 2020-00399 and as amended here, is substantially completed. Construction costs shall be classified into appropriate plant accounts in accordance with the Uniform System of Accounts for water utilities prescribed by the Commission.

7. McCreary District shall file a copy of the “as-built” drawings and a certified statement that the construction has been satisfactorily completed in accordance with the contract plans and specifications within 60 days of the substantial completion of the construction authorized under the CPCN granted in 2020-00399 and as amended here.


8. Any documents filed in the future pursuant to ordering paragraphs 6 and 7 shall reference this case number and shall be retained in the post-case correspondence file.

9. The Executive Director is delegated authority to grant reasonable extensions of time for filing any documents required by this Order upon McCreary District’s showing of good cause for such extension.

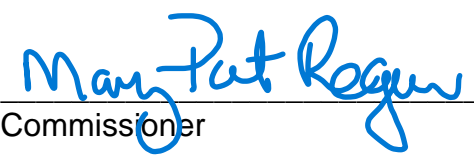
10. This case is closed and removed from the Commission’s docket.

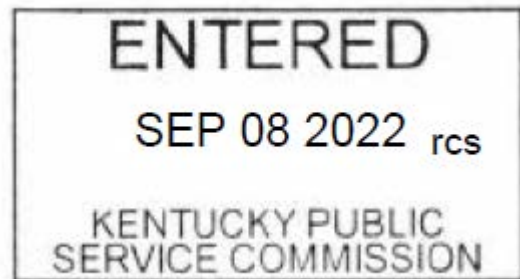
Nothing contained herein shall be deemed a warranty or finding of value of securities or financing authorized herein on the part of the Commonwealth of Kentucky, or any agency thereof.

PUBLIC SERVICE COMMISSION


Chairman

Vice Chairman


Commissioner



ATTEST:


Executive Director

*Gerald E Wuetcher
Attorney at Law
STOLL KEENON OGDEN PLLC
300 West Vine Street
Suite 2100
Lexington, KENTUCKY 40507-1801

*Jennifer Whitaker
McCreary County Water District
P.O. Box 488
Whitley City, KY 42653

*McCreary County Water District
Highway 27
P. O. Box 488
Whitley City, KY 42653

*Stephen Whitaker
Superintendent
McCreary County Water District
P.O. Box 488
Whitley City, KY 42653