

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF ROWAN)	
WATER, INC. FOR A CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY TO)	
CONSTRUCT A SYSTEM IMPROVEMENTS)	CASE NO.
PROJECT AND AN ORDER APPROVING A)	2023-00046
CHANGE IN RATES AND AUTHORIZING THE)	
ISSUANCE OF SECURITIES PURSUANT TO KRS)	
278.023)	

ORDER

On March 24, 2023, Rowan Water, Inc. (Rowan Water) filed a motion to strike portions of the final Order entered on March 23, 2023, in this proceeding. Rowan Water requested to strike the portion of the Order that conveyed the Commission’s concern and frustration with the utility’s commissioners’ and manager’s lack of transparency and forthrightness resulting from their failure to provide written notice to the Commission of the potential to file duplicative rate increase proceedings until one of those proceedings was filed. For the reasons discussed in detail below, the Commission finds that the motion should be denied. To the extent that clarification is needed, the Commission notes that its concern regarding the lack of forthrightness and candor is directed to the utility, Rowan Water, and its commissioners and manager, and not to its counsel.

This issue arises from the Rowan Water commissioners’ and manager’s decision to move forward with preparing an application for approval of a United States Department of Agriculture Rural Development (RD) loan (KRS 278.023 proceeding), which they knew included a rate increase, at the same time that they authorized and prepared an

alternative rate adjustment filing (ARF) application, which had been previously ordered by the Commission¹ and, as filed, increased rates.

As a basis for its motion, Rowan Water asserted that the Commission misstated information regarding the timing of filing the ARF application and the KRS 278.023 application. Rowan Water alleged that it provided written notice to the Commission of the potential for overlapping rate increase proceedings in its ARF application filed in September 2022, and in responses to two data requests in Case No. 2022-00252.² Rowan Water further alleged that its counsel contacted Commission Staff prior to filing the ARF application to relay that the ARF and KRS 278.023 proceedings would overlap.³ For this reason, Rowan Water argued that it was forthright with the Commission about the potential overlapping cases.

The Commission notes that Rowan Water's argument that it notified the Commission⁴ of the duplicative rate increase proceedings in the ARF case application misses the point that notice was provided after the fact. In other words, notice was not provided until the ARF case had been prepared and filed. The after the fact notice wasted utility resources – and ratepayer funds – used to prepare an ARF application that the

¹ Rowan Water was ordered to file an ARF no later than April 19, 2022, in Case No. 2021-00042, but did not timely file the application or request an extension of time to file the ARF. See Case No. 2021-00042 *Electronic Application of Rowan Water, Inc. to Issue Securities in the Approximate Principal Amount of \$2,450,000 for the Purpose of Refunding Certain Outstanding Indebtedness of the Association Pursuant to the Provisions of KRS 278.300 and 807 KAR 5:001* (Ky. PSC Apr. 19, 2021).

² Motion to Strike at 2-3, referencing Case No. 2022-00252, *Electronic Application of Rowan Water, Inc. for an Alternative Rate Adjustment and an Investigation into Rowan Water, Inc. and Its Individual Directors, Larry Johnson, Danny Stevens, Danny Cox, Mike Collins, Enoch Blair, and Its Manager, Jerry Patrick, for Allegedly Failing to Comply with KRS 278.300 and a Commission Order* (filed Sept. 6, 2022).

³ Motion to Strike at 3.

⁴ As discussed in this Order, informal conversations with Commission Staff do not comport with the filing requirements in 807 KAR 5:001E, Sections 4, 5, 7, and 8, and thus do not constitute notice to the Commission.

Commission likely would have delayed had the Rowan Water commissioners and manager provided the Commission with written notice of the possible overlapping cases in May or June 2022, as discussed below.

Based upon a review of the motion, and the records of this case and Case No. 2022-00252, the Commission finds that Rowan Water failed to establish good cause to strike the requested portions of the March 23, 2023 Order, and therefore the motion should be denied. This is because between May and June 2022, there were three opportunities for Rowan Water's commissioners and manager to notify the Commission of the potential for duplicative rate increase proceedings. The first opportunity was in May 2022 when the Rowan Water commissioners and manager became aware that the utility's ARF filing was past due.⁵ Rowan Water had been pursuing a project funded by a RD loan since December 2021.⁶ Because the three most recent RD loans to Rowan Water required the utility to implement rate increases as a loan condition to cover certain costs, Rowan Water's commissioners and manager should have known of the potential for duplicative rate increases arising from ARF and KRS 278.023 proceedings and that the timing for processing both proceedings would overlap.⁷

⁵ Case No. 2022-00252, Jerry Patrick and Rowan Water Response (filed Mar. 8, 2023).

⁶ See Application, RD-Summary Addendum and 2021 Water System Improvements, Water Main Pump Stations, Contract Documents and Specifications.

⁷ See Case No. 2019-00411, *Electronic Application of Rowan Water, Inc. for the Issuance of a Certificate of Public Convenience and Necessity to Construct a System Improvements Project and an Order Approving a Change in Rates and Authorizing the Issuance of Securities Pursuant KRS 278.023* (Ky. PSC Dec. 19, 2019) (approving 7 percent rate increase as RD loan condition); Case No. 2017-00250, *Application of the Rowan Water, Inc. for a Certificate of Public Convenience and Necessity to Construct, Finance and Increase Rates Pursuant to KRS 278.023* (Ky. PSC Aug. 3, 2017) (approving 6.47 percent rate increase as RD loan condition); and Case No. 2012-00189, *Application of the Rowan Water, Inc. for a Certificate of Public Convenience and Necessity to Construct, Finance and Increase Rates Pursuant to KRS 278.023* (Ky. PSC July 2, 2012) (approving 26.6 percent rate increase required as RD loan condition).

The second opportunity was at the June 8, 2022 board meeting, when Rowan Water's commissioners and manager discussed pursuing the ARF filing and the RD loan. At that board meeting, Rowan Water's commissioners authorized going forward with both the ARF proceeding and the RD loan.⁸ The third opportunity was when Rowan Water's commissioners and manager were informed in a June 22, 2022 letter that the RD loan approval included a loan condition to increase Rowan Water's rates by 29 percent.⁹

By waiting until September 2022 to provide notice of the overlapping cases, Rowan Water's commissioners and manager expended funds to prepare an ARF that likely would have been delayed had written notice of the material change in circumstances, especially the 29 percent increase required by RD, been provided in May or June 2022.

Based on the above discussion, the Commission concludes that the portion of the March 23, 2023 Order that Rowan Water requested to strike accurately conveyed the reason for and degree of the Commission's concern, and therefore Rowan Water's motion should be denied.

Finally, the Commission speaks through its Orders and not through Commission Staff. It is neither the proper or efficient use of Commission Staff's or a utility's time to ask Commission Staff to convey information to the Commissioners or to interpret a Commission Order. The better practice is to file a motion or notice that puts the request or information before the Commission so that a binding decision can be made by Commission Order and entered into the administrative record.

IT IS THEREFORE ORDERED that Rowan Water's motion is denied.

⁸ Case No. 2022-00252, Application, Board Minutes (filed Sept. 6, 2022).

⁹ Application, Exhibit B, Letter of Conditions.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner



ATTEST:


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