

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF LYON COUNTY)	CASE NO.
WATER DISTRICT FOR A CERTIFICATE OF)	2023-00096
PUBLIC CONVENIENCE AND NECESSITY)	

ORDER

On March 17, 2023, Lyon County Water District (Lyon District) tendered a request pursuant to KRS 278.020, KRS 278.300, and 807 KAR 5:001, Section 15, seeking financing approval and Certificates of Public Convenience and Necessity (CPCN) for the rehabilitation two water storage tanks, and improving and upgrading three sections of water main, including a waterline creek crossing.¹ Lyon District's March 17, 2023 request, which did not included an application in the form required by 807 KAR 5:001, Section 14 and Section 15, was found to be deficient. On May 17, 2023, Lyon District tendered a formal application for the CPCN, but it was found to be deficient. Lyon District tendered a revised application that cured the deficiencies on June 9, 2023 and its application was accepted for filing. No party requested intervention in this proceeding. Lyon District responded to one round of discovery. This matter now stands submitted for decision by the Commission.

¹ Revised Application (filed June 9, 2023) at 1 and 2.

BACKGROUND

Lyon District is a water district organized under KRS Chapter 74 that provides retail water service to approximately 2,820 customers in Lyon County.² Lyon District's plant in service as of December 21, 2021, was \$17,455,179.00 and its accumulated depreciation was \$7,550,313.00.³ Lyon District had approximately \$1,399,626 in Operating Revenues and (\$70,755) in Net Income in 2022.⁴ Lyon District made an alternative rate filing in Case No. 2021-00391 and a rate increase was approved in that case for service after May 13, 2022.⁵

Jack Thomason Tank and Lamasco Tank Rehabilitation

Lyon District seeks approval to rehabilitate two water storage tanks, the Jack Thomason Tank, and the Lamasco Tank. Lyon District stated the Jack Thomason Tank was constructed in February of 1997,⁶ placed into service in March of that year, and currently has an expected remaining useful life of three to five years without repairs.⁷ Lyon District stated that the Lamasco Tank was constructed in October of 1984 and placed into service a few weeks after,⁸ and that it currently has an estimated remaining

² Revised Application at 3.

³ *Annual Report of Lyon District to the Public Service Commission for the year end December 31, 2022* (2022 Annual Report) at 24–25.).

⁴ 2022 Annual Report at 20–21.

⁵ See Case No. 2021-00391, *Electronic Application of Lyon County Water District for a Rate Adjustment Pursuant to 807 KAR 5:076* (Ky. PSC May 13, 2022), Order.

⁶ Lyon District's Response to Commission Staff's First Request for Information (Staff's First Request) (filed June 26, 2023), Item 5.

⁷ Lyon District's Response to Staff's First Request, Item 6.

⁸ Lyon District's Response to Staff's First Request, Item 11.

useful life of five to seven years without repairs.⁹ Lyon District stated that the proposed projects will extend the remaining useful lives of the tanks to 30 years.¹⁰

Lyon District stated that as part of a regular and continuous monitoring of the tanks it was determined that there was a need to review the soundness of the tanks. Lyon District retained HDR Engineering (HDR) to evaluate the Jack Thomason Tank and to provide specifications on recommended work on the Lamasco Tank, among other things.¹¹ HDR initially noted that the standpipe of the Lamasco Tank needs coating on the interior to mitigate a rust problem that was observed during inspections and that the Jack Thomason Tank needs a coating on the interior and exterior of the tank according to the last inspection.¹²

Following its review of the tanks, HDR determined that the repairs required on the Jack Thomason Tank included replacing the Mainway, level indicator, roof screen, installing a stiffener ring, grouting the base of the tank, and installing a mixing system and appurtenances as well as cleaning, painting, and recoating the exterior and interior of the tank.¹³ HDR also stated that the Lamasco Tank needed repair, cleaning, painting, installation of a mixing system, installation of Anti-Corrosion system, Installation of altitude

⁹ Lyon District's Response to Staff's First Request, Item 12.

¹⁰ Lyon District's Response to Staff's First Request, Items 6 and 12.

¹¹ Revised Application at 4.

¹² Revised Application, Exhibit 2, Scope of Services (discussing work that HDR indicated needed to be completed on the tanks).

¹³ See Revised Application, Exhibit 6 (showing the specific projects HDR included in the bid for the tank); see also Contract III Water Tank Improvements (filed June 9, 2023).

valve, replacement of manway gaskets and bolts, a roof screen replacement, grout on the base of the tank, and replacement of safety climb and hardware.¹⁴

Lyon District stated in its application that a leak was identified on the Jack Thomason Tank in the fall of 2022,¹⁵ which was before the work recommended by HDR was completed. The Commission notes that an inspection of Lyon District's system by the Commission's Division of Inspection in September 2022 identified a visible leak in the Jack Thomason Tank and stated that the tank appeared to be in poor-failing condition. Lyon District indicated the leak identified at that time was repaired by C&S Services, LLC at a cost of about \$4,000.¹⁶

Lyon District stated that replacement of the Jack Thomason Tank and the Lamasco Tank were considered as an alternative to the proposed rehabilitation work on the tanks.¹⁷ Lyon District explained that a general analysis by the project engineer indicated that rehabilitation was more cost effective than replacement of the tanks.¹⁸ However, Lyon District indicated that the costs of replacement were not analyzed in detail such that it was unable to provide any cost breakdowns of replacing the tanks.¹⁹ Rather, Lyon District stated that the project engineer reviewed area cost information and Case No. 2022-00316 to determine that replacing the tank would not be cost-effective.²⁰ Lyon District also

¹⁴ Revised Application, Exhibit 6 (showing the specific projects HDR included in the bid for the tank); see also Contract III Water Tank Improvements (filed June 9, 2023).

¹⁵ See Revised Application at 3.

¹⁶ Revised Application at 3, Exhibit 3.

¹⁷ Lyon District's Response to Staffs First Request, Items 4 and 9.

¹⁸ Lyon District's Response to Staffs First Request, Items 2 and 8.

¹⁹ Lyon District's Response to Staffs First Request, Items 2 and 8.

²⁰ Lyon District's Response to Staffs First Request, Items 1 and 7.

stated that there was too much service life remaining in the tanks to tear them down and replace them.²¹

HDR estimated the cost of the rehabilitation of the two tanks to be \$453,000, but the only two bids for the projects came in below that amount at \$263,690 and \$314,300, respectively.²² Thus, Lyon District estimated that the cost to rehabilitate the Jack Thomason Tank would be \$231,210 and that the cost to rehabilitate the Lamasco Tank would be \$63,420.²³

Water Line Improvements

Lyon District also seeks approval of the three water line replacement projects—the replacement of a waterline creek crossing near State Highway 274, and the replacement and upgrading of sections of waterlines in the Indian Hills and Tinsley Creek Bay subdivisions.²⁴ Lyon District stated that the waterline creek crossing near State Highway 274 is in need of replacement due to erosion.²⁵ A letter regarding the scope of work from HDR noted that Lyon District’s superintendent indicated that the line is very shallow and in danger of immediate failure,²⁶ and Lyon District asserted in this matter that the line is

²¹ Lyon District’s Response to Staff’s First Request, Items 4 and 9.

²² Revised Application, Exhibit 6.

²³ Revised Application, Exhibit 8,

²⁴ Revised Application at 4.

²⁵ Revised Application at 4.

²⁶ Revised Application, Exhibit 2, Scope of Services (discussing the creek crossing project).

exposed due erosion from the creek.²⁷ Lyon District argued that there are no viable alternatives to the creek crossing project, because it is an exposed line.²⁸

Lyon District asserted that the waterlines it proposes to replace and upgrade in the Indiana Hills subdivision must be replaced due to lines containing lead.²⁹ Lyon District stated that it will be replacing all lead contaminated service lines in its service area due to the Environmental Protection Agency's (EPA) revised lead and copper rules.³⁰ Lyon District claimed that there were no viable alternatives to replacing the lines.³¹

Lyon District stated that the lines it is replacing and upgrading in the Tinsley Creek Bay subdivision cannot support the required pressures to assure adequate service.³² Lyon District asserted that the lines were originally installed in a low-grade area with inferior quality pipe which has resulted in a number of line breaks that have been repaired by the district. Lyon District also noted that the lines in that area are presently two-inch pipe such that it does not allow Lyon District to maintain pressure at the level needed to provide adequate service.³³ Lyon District plans to upgrade the lines to four-inch PVC lines.³⁴ Lyon District did not identify any alternatives to this project.

Financing

²⁷ Lyon District's Response to Staff's First Request, Item 13.

²⁸ Lyon District's Response to Staff's First Request, Item 13.

²⁹ Revised Application at 4.

³⁰ Lyon District's Response to Staff's First Request, Item 14.

³¹ Lyon District's Response to Staff's First Request, Item 14.

³² Revised Application at 4.

³³ Lyon District's Response to Staff's First Request, Item 14.

³⁴ Revised Application, Exhibit 8.

Lyon District stated that it is seeking to finance the project through a Kentucky Infrastructure Authority (KIA) loan. KIA provided that the loan would be for a 20-year term, would not exceed \$2,094,675, and would bear interest at a rate of 2.50 percent per annum, with an additional 0.25 percent of the outstanding loan balance to be paid as part of each interest payment.³⁵ Lyon District asserted that the project and financing will not require an adjustment to its rates for service.³⁶

LEGAL STANDARD

The Commission's standard of review regarding 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.³⁷ To obtain a CPCN, the utility must demonstrate a need for such facilities and an absence of wasteful duplication.³⁸ HDR solicited bids and made a recommendation to Lyons District regarding which bid to accept.³⁹

"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

³⁵ Revised Application, Exhibit 11

³⁶ Revised Application at 9,

³⁷ KRS 278.020(1). Although the statute exempts certain types of projects from the requirement to obtain a CPCN, the exemptions are not applicable

³⁸ *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 252 S.W.2d 885 (Ky. 1952)

³⁹ Revised Application, Exhibit 7.

of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service.⁴⁰

“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.”⁴¹ 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.⁴² Although cost is a factor, selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.⁴³ All relevant factors must be balanced.⁴⁴

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.”⁴⁵ 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

⁴⁰ *Kentucky Utilities Co.*, 252 S.W.2d at 890.

⁴¹ *Kentucky Utilities Co.*, 252 S.W.2d at 890.

⁴² 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.

⁴³ 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), Order at 6.

⁴⁴ Case No. 2005-00089, Aug. 19, 2005 Order at 6.

⁴⁵ KRS 278.300(1).

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.

DISCUSSION AND FINDINGS

Lyon District's Request for a CPCN

Having considered the application and all evidence in the record, the Commission finds that the CPCNs should be granted. The evidence indicates that the Jack Thomason Tank and Lamasco Tank are reaching the end of their useful lives and that repairs are necessary to extend their useful lives and provide service to the customers they serve. In fact, the Jack Thomason Tank is in particularly poor condition and appears to need urgent repairs. Lyon District retained HDR, a third party engineering contractor, to review the tanks, and HDR developed the proposed rehabilitation projects to address the ongoing issues with the tanks and extend their useful lives. Those proposed rehabilitation projects were specific to each tank and address the risk of further degradation without the recommended repairs. Thus, the Commission finds that there is a need for the tank rehabilitation projects.

Lyon District stated that it considered replacement of the existing tanks, which would also address the need, as opposed to the proposed rehabilitation projects. However, Lyon District indicated that it did not seriously pursue replacement of the existing tanks, because a general analysis by the project engineer indicated that

rehabilitation was more cost effective than replacement of the tanks.⁴⁶ While Lyon District should have provided a more thorough explanation of the costs of the alternatives that considered the capital costs of both projects, the useful lives of the projects, and incremental differences in operation and maintenance expenses, the Commission does find the project engineer's general analysis to be credible, because it is consistent with cost estimates recently provided by other utilities.⁴⁷ In fact, in the case referred to by Lyon District as a basis for its engineer's cost determination, a utility was proposing a new water tower at an estimated cost of \$900,000.⁴⁸ Further, Lyon District has a KIA loan for these projects, which will significantly lower its costs due to the favorable interest rate, and it is unclear that it could obtain such financing for a new tower in addition to the other projects it has proposed. Thus, the Commission finds that the proposed water tower projects for which Lyon District is requesting a CPCN will not result in wasteful duplication and that Lyon District's request for a CPCN for those projects should be granted, though the Commission's finding that the CPCN should be granted is based, in part, on the expectation that the project will be financed with the KIA loan.

The evidence also indicates that the water line crossing is in need of replacement due to exposure and erosion. Further, while Lyon District should have provided additional information regarding how the proposed plan will eliminate the issues with the existing

⁴⁶ Lyon District's Response to Staff's First Request, Items 2 and 8.

⁴⁷ See Case No. 2023-00097, *Electronic Application of Bath County Water District for a Certificate of Public Convenience and Necessity to Construct and Finance Improvement Projects Pursuant to 278.020 and 278.300* (Ky. PSC June 29, 2023), Order (indicating that the district estimated the cost of new water tower to be between \$400,000 and \$1,000,000).

⁴⁸ See Case No. 2022-00316, *Electronic Application of East Casey County Water District for a Certificate of Public Convenience and Necessity to Construct a System Improvements Project and an Order Approving an Increase in Rates and Authorizing the Issuance of Securities Pursuant to KRS 278.023* (filed Sept. 29, 2022), Application, Final Engineering Report.

crossing and explained why it chose this plan, there is some evidence that the plan was developed by Lyon District's engineer specifically to address the issues with depth and erosion faced by the existing line. Further, the project is not large as it consists of replacing only 199 liner feet of 6-inch PVC at an estimated total cost of \$73,638.⁴⁹ Thus, the Commission finds that Lyon District's proposed creek crossing project is needed and will not result in wasteful duplication, and that Lyon District's request for a CPCN for those projects should be granted.

With respect to the projects to upgrade and replace the lines in the Indiana Hills and Tinsley Creek Bay subdivisions, the Commission notes that there was some ambiguity and inconsistent statements regarding the extent and nature of the projects in some of the supporting documents filed in this case. Further, there appears to be projects referenced in the KIA documents for which no request for a CPCN was made in this matter. However, Lyon District presented evidence that the projects in the Indiana Hills and Tinsley Creek Bay subdivisions, as reflected in the plans and specifications filed in this case, were needed to address lead in the lines and to comply with the EPA's lead and copper rules, and to address the condition and size of the lines, which have caused frequent line breaks and limited capacity. Further, Lyon District indicated that the projects, as reflected in the plans and specifications filed in this case, were developed with its third party engineer to address those issues, and Lyon District has obtained favorable financing from KIA to do so. Thus, the Commission finds that the proposed projects in the Indiana Hills and Tinsley Creek Bay subdivisions, as set forth in the plans and specifications filed in this case, are needed and will not result in wasteful duplication,

⁴⁹ Revised Application, Exhibit 2.

and therefore, that a CPCN should be granted for those projects. However, in future cases, Lyon District should provide clear explanations of and the required information for each project proposed, or the Commission may be forced to deny an application or be unable to meet a time sensitive date.

Lyon District's Request for Financing Approval

Lyon District is proposing to finance the projects discussed above with a loan issued by KIA, not to exceed \$2,097,675, with a 20-year term, and an interest rate of 2.50 percent per annum and a service fee of 0.25 percent of the outstanding balance to be made with each interest payment. Lyon District requests approval of the proposed financing pursuant to KRS 278.300(1). The Commission finds that the financing is necessary for the completion of the projects discussed above and will not impair Lyon District's ability to provide service. As noted above, the Commission finds that the projects at issue are necessary and will not result in wasteful duplication. Further, because the loan is being issued by KIA, the rates and terms are extremely favorable. Thus, the Commission finds that the financing which Lyon District's request approval is for a lawful object within the corporate purpose of Lyon District's utility operations, is necessary and appropriate for and consistent with proper performance of Lyon District's service to the public, will not impair Lyon District's ability to perform that service, and is reasonably necessary and appropriate for such purposes; therefore, the Commission finds that the approval of the financing should be granted.

IT IS THEREFORE ORDERED that:

1. Lyon District is granted a CPCN to rehabilitate the two water storage tanks, to improve the water line crossing, and to upgrade and replace two sections of water main as set forth in its application.

2. Lyon District shall immediately notify the Commission upon knowledge of any material changes to the projects, including, but not limited to, increase in cost and any significant delays.

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

4. Lyon District shall file with the Commission documentation of the total costs of the projects, including the cost of construction and all other capitalized costs, (e.g., engineering, legal, administrative, etc.) within 60 days of the date that construction authorized under this CPCN 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.

5. Lyon 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 certificated herein.

6. Lyon District is authorized to issue the evidences of debt requested subject to the conditions discussed herein.

7. The proceeds from the issue of the evidences of debt authorized shall be used only for the lawful purposes set out in the application.

8. Lyon District shall only execute the KIA loan documents to the extent their terms and conditions are consistent with the loan described in its application, except as otherwise authorized herein.

9. Lyon District shall file the KIA loan documents in this matter within ten days of the executing them.

10. Any documents filed in the future pursuant to ordering paragraphs 4, 5, and 9 shall reference this case number and shall be retained in the post-case correspondence file.

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

12. 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

Kent Cole
Chairman

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Angie Hutton
Vice Chairman

May Pat Regan
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ENTERED
AUG 11 2023 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

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