

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BREATHITT )	
COUNTY WATER DISTRICT FOR THE ISSUANCE )	
OF A CERTIFICATE OF PUBLIC CONVENIENCE )	
AND NECESSITY TO CONSTRUCT A WATER )	
SYSTEM IMPROVEMENT PROJECT PURSUANT )	
TO THE PROVISIONS OF KRS 278.020 AND 807 )	
KAR 5:001 OR ALTERNATELY, A DECLARATORY )	CASE NO.
ORDER ESTABLISHING THAT A CERTIFICATE )	2023-00262
OF PUBLIC NEED AND CONVENIENCE IS NOT )	
NECESSARY AS TO A WATERLINE EXTENSION )	
(FIVE MILE WLE), PURSUANT TO 807 KAR 5:001 )	
(15) AND/OR 807 KAR 5:001 (19) )	

ORDER

On August 4, 2023, Breathitt County Water District (Breathitt District) tendered an application, pursuant to KRS 278.020 and 807 KAR 5:001, Section 15 and 19, for a Certificate of Public Convenience and Necessity (CPCN) authorizing it to construct a 2,350-linear foot (LF) water main extension or a declaration that no CPCN would be required.

The application did not meet the minimum filing requirements, as it does not contain bookmarks to distinguish sections of the application nor has the file been properly optimized to render text pages searchable as required by Commission regulation 807 KAR 5:001, Section 8(4)(b). However, sufficient information is presented in the application for the Commission to determine that the proposed project falls within a statutory exception to the CPCN requirement. Therefore, pursuant to 807 KAR 5:001, Section 22, grants a deviation from the minimum filing requirements and finds that the

application should be accepted as filed. No party sought intervention in this matter. The record is complete, and this matter is before the Commission on the evidentiary record.

### BACKGROUND

Breathitt District, a water district organized under KRS Chapter 74, provides retail water service to approximately 2,001 residential customers in Breathitt County.<sup>1</sup> Breathitt District has a total net utility plant of \$33,771,647 as of December 31, 2021, and annual operating revenue of \$1,259,912 for 2021.<sup>2</sup>

### PROPOSED PROJECT

In May of 2023, Breathitt District was awarded an American Rescue Plan Act (ARPA) grant of \$282,000.<sup>3</sup> Breathitt District plans to fully finance the proposed project with the ARPA grant. The project will involve the installation of approximately 2,400 LF of 6-inch PVC water line and appurtenances with five water service connections in the Five Mile area of Breathitt County.<sup>4</sup> The water line will be installed via simple trenching, with no stream crossings necessary.<sup>5</sup> Three firms submitted bids, and the lowest bid was \$218,340 from KeeTech Construction HDD.<sup>6</sup>

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<sup>1</sup> *Annual Report of Breathitt County Water District to the Public Service Commission for the Year Ending December 31, 2021* (2021 Annual Report) at 49.

<sup>2</sup> 2021 Annual Report at 16, 20.

<sup>3</sup> Application at 5 and Exhibit C.

<sup>4</sup> .Application at 5 and Exhibit A.

<sup>5</sup> Application at 5, and Exhibit A.

<sup>6</sup> Application at 5 and at Exhibit E.

## 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). To obtain a CPCN, a utility must demonstrate a need for such facilities and an absence of wasteful duplication.<sup>7</sup>

"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.<sup>8</sup>

"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".<sup>9</sup>

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

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<sup>7</sup> *Kentucky Utilities Co. v. Public Service Comm'n*, 252 S.W.2d 885 (Ky. 1952).

<sup>8</sup> *Kentucky Utilities Co. v. Public Service Comm'n*, 252 S.W.2d at 890.

<sup>9</sup> *Kentucky Utilities Co. v. Public Service Comm'n*, 252 S.W.2d at 890.

alternatives has been performed.<sup>10</sup> Selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.<sup>11</sup> All relevant factors must be balanced.<sup>12</sup>

The exception requirements to a CPCN for a water district are set out in KRS 278.020(1)(a)(3):

A water district created under KRS Chapter 74 or a water association formed under KRS Chapter 273 that undertakes a waterline extension or improvement project if the water district or water association is a Class A or B utility is defined in the uniform system of account established by the commission according to KRS 278.220 and:

a. The water line extension or improvement project will not cost more than five hundred thousand dollars (\$500,000); or

b. The water district or water association will not, as a result of the water line extension or improvement project, incur obligations requiring commission approval as required by KRS 278.300.

In either case, the water district or water association shall not, as a result of the water line extension or improvement project, increase rates to its customers;

Until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.

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

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<sup>10</sup> 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).

<sup>11</sup> See *Kentucky Utilities Co. v. Public Service Comm’n*, 390 S.W.2d 168, 175 (Ky. 1965).

<sup>12</sup> 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 at 6, 18.

the securities or evidence of indebtedness of any other person.”<sup>13</sup> 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.

Pursuant to 807 KAR 5.001, Section 19, the Commission may, upon application by a person substantially affected, issue a declaratory order with respect to the jurisdiction of the Commission, the applicability to a person, property, or state of facts of an order or administrative regulation of the Commission or provision of KRS Chapter 278, or with respect to the meaning and scope of an Order or administrative regulation of the Commission or provision of KRS Chapter 278. Here, Breathitt District seeks an Order with respect to the applicability of KRS 278.020(1)(a)(3) to the proposed project, or in the alternative a CPCN to construct the project.

#### DISCUSSION

Breathitt District maintained that the proposed project meets the requirements necessary for the Commission to grant a declaratory order exempting Breathitt District from the CPCN requirement. Specifically, Breathitt District was created pursuant to KRS Chapter 74 in August 2004,<sup>14</sup> and had \$1,259,912 in annual revenue in 2021.<sup>15</sup>

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<sup>13</sup> KRS 278.300(1).

<sup>14</sup> 2021 Annual Report at 9.

<sup>15</sup> 2021 Annual Report at 20.

Thus, Breathitt District is a Class A utility, having more than \$750,000 in annual water revenue.<sup>16</sup> Further, the proposed project is an extension of an existing water line and, at a total cost of approximately \$282,000,<sup>17</sup> is less than the \$500,000 cap that KRS 278.020(1)(a)(3)(a) imposes for the CPCN exception. Further, Breathitt District will not incur debt associated with the project because the project will be fully financed through an ARPA grant. Breathitt District anticipates that the annual cost for the operation of the proposed water main extension will be \$1,284.<sup>18</sup>

### FINDINGS

Having considered the application and being otherwise sufficiently advised, the Commission finds that the proposed construction does not require a CPCN. In accordance with KRS 278.020(1)(a)(3), Breathitt District is exempt from needing a CPCN for the proposed project because the District is a Class A utility created under KRS Chapter 74,<sup>19</sup> the proposed project is a waterline extension and improvement project costing less than \$500,000,<sup>20</sup> and the utility will not raise its rates as a result of this project.<sup>21</sup>

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<sup>16</sup> *National Association of Regulatory Utility Commissioners Uniform System of Accounts for Class A/B Water Companies* (1996) (as modified and adopted by the Public Service Commission in 2002) at 14.

<sup>17</sup> Application at page 3, paragraph 5(v).

<sup>18</sup> Exhibit D at 2.

<sup>19</sup> 2021 Annual Report at 20.

<sup>20</sup> Application at 5 and Exhibit C.

<sup>21</sup> Application. at 7 and Exhibit C.

IT IS THEREFORE ORDERED that:

1. Breathitt District is granted a deviation from the minimum filing requirements as stated in this Order and its application is accepted for filing.

2. Breathitt District's request for a declaration that no CPCN is required for the proposed project is granted.

3. Breathitt District shall obtain approval from the Commission prior to performing any additional construction not expressly authorized by this Order.

4. Breathitt District shall file with the Commission documentation of the total costs of this project, including the cost of construction and all other capitalized costs (e.g., engineering, legal, and administrative), within 60 days of the date that construction 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. Breathitt County shall file a copy of the "as-built" drawings and a certified statement from the engineer that the construction has been satisfactorily completed in accordance with the contract plans and specifications within 60 days of substantial completion of the construction certified herein.

6. Breathitt District shall require the construction to be inspected under the general supervision of a 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 the best practices of the construction trades involved in the project.

7. Breathitt District shall notify the Commission in writing one week before the actual start of construction and at the 50 percent completion point.

8. Any documents filed in the future pursuant to ordering paragraphs 4, 5, and 7 of this Order shall reference this case number and shall be retained in the post-case correspondence file.

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

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PUBLIC SERVICE COMMISSION

  
\_\_\_\_\_  
Chairman

  
\_\_\_\_\_  
Vice Chairman

  
\_\_\_\_\_  
Commissioner



ATTEST:

  
\_\_\_\_\_  
Executive Director

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