

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BLUEGRASS)	
WATER UTILITY OPERATING COMPANY, LLC)	
FOR AN ORDER DECLARING THAT (1) FUTURE)	
REMOTE MONITORING EQUIPMENT)	CASE NO.
INSTALLATIONS ARE EXEMPT FROM CPCN)	2024-00087
REQUIREMENTS; AND (2) THE PARTIAL)	
WAIVER OF DAILY IN-PERSON INSPECTIONS)	
WILL APPLY TO FUTURE SYSTEMS RECEIVING)	
REMOTE MONITORING EQUIPMENT)	

ORDER

On April 17, 2024, Bluegrass Water Utility Operating Company, LLC (Bluegrass Water) filed an application for a declaratory order, pursuant to KRS 278.020, 807 KAR 5:006, and 807 KAR 5:071, that would determine that (1) future remote monitoring equipment (RME) installations are exempt from Certificate of Public Convenience and Necessity (CPCN) requirements, and (2) Bluegrass Water has been granted a partial waiver of the daily in-person inspection requirement for systems, including future systems, on which RME is installed. There are no intervenors in this matter and no person filed a response to the Application pursuant to 807 KAR 5:001, Section 19(4). This matter is now before the Commission for a decision on the merits.¹

¹ Pursuant to 807 KAR 5:001, Section 19, the Commission may, among other things, “issue a declaratory order. . . with respect to the meaning and scope of an order or administrative regulation of the commission or provision of KRS Chapter 278.” The Commission “may dispose of an application for a declaratory order solely on the basis of the written submissions filed” or may allow for other actions, including additional discovery, to ensure that the record is complete.

BACKGROUND

Bluegrass Water is a Class B sewer utility organized and existing under the laws of the Commonwealth of Kentucky. Bluegrass Water is a manager-managed company that is managed by Central States Water Resources, Inc. (Central States). It is wholly owned by CSWR, LLC (CSWR), which owns and operates sewage utilities through subsidiaries in several other states. Bluegrass Water currently owns sewage utilities in Boyle, Bullitt, Campbell, Franklin, Garrard, Hardin, Jessamine, Madison, Marshall, McCracken, Oldham, Scott, and Shelby counties and water systems in Calloway County.²

Bluegrass Water seeks a declaratory order that the purchase and installation of RME at three recently acquired systems (Yung Farm, Commonwealth Wastewater, and Magruder Village wastewater facilities) and at similar facilities acquired in the future, constitute an ordinary extension of existing systems in the usual course of business and therefore do not require a CPCN. In addition, Bluegrass Water seeks a waiver of daily in-person inspections at all systems with RME ordinarily required by 807 KAR 5:071, Section 7(4).

The Yung Farm, Commonwealth Wastewater, and Magruder Village wastewater facilities have 21, 14, and 20 customers respectively,³ which makes them among the smaller systems operated by Bluegrass Water. Bluegrass Water argued that a CPCN

² Application at 2.

³ Case No. 2023-00181, *Electronic Joint Application of Bluegrass Water Utility Operating Company, LLC for Approval of Acquisition and Transfer of Ownership and Control of Assets of Commonwealth Wastewater Systems, LLC, Yung Farm Estate Homeowners' Association, Inc., and Moon River Marina and Resort, LLC* (Ky. PSC Sept. 22, 2023), final Order at 2–3; and Case No. 2023-00218, *Electronic Joint Application of Bluegrass Water Utility Operating Company, LLC for Approval of Acquisition and Transfer of Ownership and Control of Assets of Magruder Village Water Company* (Ky. PSC Oct. 20, 2023), final Order at 3.

was granted for similar or identical RME for other Bluegrass Water systems in Case No. 2022-00216.⁴ Bluegrass Water plans to install High Tide RME systems in the instant project.⁵ Bluegrass Water argues the High Tide RME systems offer flexibility because the equipment is scalable based on the nature of the facility, allowing Bluegrass Water to better control the costs of each individual RME installation and avoid wasteful duplication.⁶ Bluegrass Water argues that the installation of RME would not result in a material capital outlay, as the cost of installation represents a fraction of a percent of Bluegrass Water's plant in service.⁷ Bluegrass Water further argues that the installation of RME will not conflict with existing certificates of service of other utilities because the RME would be exclusively installed to assist Bluegrass Water monitor its own systems within its own service territory.⁸

In support of the waiver for daily in-person inspections, Bluegrass Water stated that RME provides Bluegrass Water's operations team with real time information on the condition of facilities, "making much of the data obtained by daily in-person inspections available at all times."⁹ Bluegrass Water further argued that a deviation from daily in-person inspections allowing Bluegrass Water to inspect systems three times a week was

⁴ Case No. 2022-00216, *Electronic Application of Bluegrass Water Utility Operations Company, LLC for a Certificate of Public Convenience and Necessity for the Installation of Monitoring Equipment and for a Corresponding Limited Waiver of Daily Inspection Requirements* (Ky. PSC Jan. 12, 2024), Order at 7.

⁵ Application at 8.

⁶ Application at 8.

⁷ Application at 10.

⁸ Application at 10.

⁹ Application at 9.

granted to Bluegrass Water for systems with comparable RME in Case No. 2022-00216.¹⁰ Among other things, Bluegrass Water noted that the Commission concluded that remote monitoring serves, at least in part, the same function as daily in-person inspections; and can “provide a level of assurance concerning the safe and adequate operation of [sewer facilities] above that of a daily visual inspection,” justifying a partial waiver of the daily in-person inspection requirement.¹¹

LEGAL STANDARD

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 meaning and scope of an order or administrative regulation of the commission or provision of KRS Chapter 278.”¹² An application for a declaratory order must:

- (a) Be in writing;
- (b) Contain a complete, accurate, and concise statement of facts upon which the application is based;
- (c) Fully disclose the applicant’s interest;
- (d) Identify all statutes, administrative regulations, and orders to which the application relates; and
- (e) State the applicant’s proposed resolution or conclusion.¹³

Any factual allegation in an application for a declaratory order must be supported by an affidavit or verified.¹⁴ The Commission “may dispose of an application for a declaratory

¹⁰ Application at 2.

¹¹ Application at 11.

¹² 807 KAR 5:001, Section 19(1); see also Case No. 2020-00095, *Electronic Application of Kenergy Corp. for a Declaratory Order* (Ky. PSC Mar. 11, 2021), Order at 4–5 (noting that Commission may issue a declaratory order, in its discretion, with respect to the meaning and scope of an order, regulation, or statute if a request is made by a person substantially affected).

¹³ 807 KAR 5:001, Section 19(2).

¹⁴ 807 KAR 5:001, Section 19(6).

order solely on the basis of the written submission filed” or may allow for other actions, including additional discovery, to ensure that the record is complete.¹⁵

DISCUSSION

Pursuant to KRS 278.020(1), no utility may construct or acquire any equipment to be used in providing utility service to the public until it has obtained a CPCN from the Commission. To obtain a CPCN, the utility must demonstrate a need for such equipment and an absence of wasteful duplication.¹⁶

“Need” requires:

[A] showing of a substantial inadequacy of existing service, involving a customer 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.¹⁷

“Wasteful duplication” is defined as “excess of capacity over need” and “an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties.”¹⁸ To demonstrate that a proposed facility does not result in wasteful duplication, the Commission has held that an applicant must

¹⁵ 807 KAR 5:001, Section 19(8); see also Case No. 2020-00095, March 11, 2021 Order at 4–5 (noting that the Commission has discretion in whether to address an application for a declaratory order).

¹⁶ *Kentucky Utilities Co. v. Pub. Service Comm’n*, 252 S.W.2d 885 (Ky. 1952).

¹⁷ *Kentucky Utilities Co. v. Pub. Service Comm’n*, 252 S.W.2d at 890.

¹⁸ *Kentucky Utilities Co. v. Pub. Service Comm’n*, 252 S.W.2d at 890.

demonstrate that a thorough review of all reasonable alternatives has been performed.¹⁹ Selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.²⁰ All relevant factors must be balanced.²¹

An exception to the CPCN requirement is provided in KRS 278.020(1)(a)(2) for “ordinary extensions of existing systems in the usual course of business.” This exception is further described in 807 KAR 5:001, Section 15(3), which states:

Extensions in the ordinary course of business. A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property, or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general or contiguous area in which the utility renders service, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.

The Commission has interpreted 807 KAR 5:001, Section 15(3), as stating that no CPCN is required for extensions “that do not result in wasteful duplication of utility plant, do not compete with the facilities of existing public utilities, and do not involve a sufficient capital outlay to materially affect the existing condition of the utility involved or to require an increase in utility rates.”²²

¹⁹ Case No. 2005-00142, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky* (Ky. PSC Sept. 8, 2005).

²⁰ See *Kentucky Utilities Co. v. Public Service Comm’n*, 390 S.W.2d 168, 175 (Ky. 1965).

²¹ 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.

²² Case No. 2000-00481, *Application of Northern Kentucky Water District (A) for Authority to issue Parity Revenue Bonds in the Approximate Amount of \$16,545,000; and (B) A Certificate of Convenience and Necessity for the Construction of Water Main Facilities* (Ky. PSC Aug. 30, 2001), Order at 4.

While the other requirements in 807 KAR 5:001, Section 15(3) must be satisfied, the determining element for whether an extension is in the ordinary course of business is generally whether the extension involves sufficient capital outlay to materially affect the existing financial condition of the utility involved.²³

The Commission has generally determined the materiality of an extension's capital outlay by comparing the cost of the extension to a utility's net plant in service. Applying that standard, the Commission has nearly always held that an extension that will require a capital outlay in excess of 10 percent of a utility's net plant in service will materially affect a utility's financial condition,²⁴ and has generally found recently that extensions that approach 5 percent of a utility's net plant in service will do the same.²⁵ Conversely, the Commission has generally found that an extension that will require a capital outlay of less than 1 percent of net plant in service is an extension in the ordinary course of business.²⁶ However, evidence other than the relationship of capital outlay to the net plant in service

²³ Case No. 2023-00415, *Electronic Application of Kentucky Utilities Company and Louisville Gas and Electric Company for Declaratory Order that the Proposed Construction of Lisle Avenue Operations Center and the Proposed Purchase of an Office Building in Eastern Jefferson County are Ordinary Extension in the Usual Course of Business and Do Not Require a Certificate of Public Convenience and Necessity*, (Ky. PSC Apr. 4, 2024), final Order at 12.

²⁴ See, e.g., Case No. 2014-00277, *In the Matter of: Springcrest Sewer Co., Inc. Request for Deviation from 807 KAR 5:071, Section 7(4)* (Ky. PSC Dec. 16, 2014), Order (finding that a remote monitoring system that exceeded 10% of a utility's net plant in service was material and, therefore, required a CPCN).

²⁵ See, e.g., Case No. 2021-00183, *Electronic Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates; Approval of Depreciation Study; Approval of Tariff Revisions; Issuance of a Certificate of Public Convenience and Necessity, and Other Relief* (Ky. PSC Dec. 28, 2021), Order 26–27 (in which the Commission found that an extension was not in the ordinary course of business, based in part, on the fact that it would require a capital outlay of about 4.76 percent of the utility's net plant in service).

²⁶ See, e.g., Case No. 2014-00171, *Application of Northern Kentucky Water District for Approval of Dixie highway Water Main Improvements, Issuance of a Certificate of Convenience and Necessity and Approval of Financing* (Ky. PSC Aug. 6, 2014), Order at 4.

is also considered.²⁷ Thus, while the materiality of the capital outlay may be obvious in many instances, there is no bright line rule, particular in close cases, for when a capital outlay is sufficient to materially affect the financial condition of a utility.

Here, Bluegrass Water indicated that the cost of each RME installation at the subject systems is a fraction of one percent of Bluegrass Water's plant in service.²⁸ Further, Bluegrass Water's net plant in service, as determined in its most recent rate case, was \$3,851,860,²⁹ and the actual and projected cost of installing RME at its other systems has been between about \$4,000 and \$25,000 per system,³⁰ which will likely be consistent with the cost of the specific systems at issue in this case. Further, while the Commission has indicated that a utility switching its entire system from one system of remote monitoring to another should look at the cost of all such systems when determining whether a CPCN is required,³¹ Bluegrass Water is not proposing to replace its existing

²⁷ See Case No. 2019-00067, *Application of Hardin County Water District No. 1 for a Declaratory Order that Proposed Waterworks Improvements to Maintain Adequate and Reliable Water Service to the Fort Knox Military Installation do not Require a Certificate of Public Convenience and Necessity* (Ky. PSC May 30, 2024), Order at 9–10 (in the which the Commission found that a large extension would not materially affect the financial condition of the utility, in part, because it was fully funded by the customer that would have served by the extension, the United States government, and the funds had already been paid and could only be used, pursuant to an agreement with the customer, on the proposed extension); Case No. 2021-00183, *Electronic Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates; Approval of Depreciation Study; Approval of Tariff Revisions; Issuance of a Certificate of Public Convenience and Necessity, and Other Relief* (Ky. PSC Dec. 28, 2021), Order at 27 (in which the Commission based a finding that an extension was not in the ordinary course of business, in part, the utility's claims that its inability to recover the costs associated with the capital outlay would have a significant effect on its financial condition); see also Case No. 2020-00060, *Electric Application of Kentucky Utilities Company for Approval of its 2020 Compliance Plan for Recovery by Environmental Surcharge* (Ky. PSC Sept. 29, 2020) ("The Commission finds that, until further Order of the Commission, any capital expenditure that exceeds \$100 million will be considered material to KU's financial position and will require a CPCN.").

²⁸ Application at 10.

²⁹ See Case No. 2022-00432, *Electronic Application of Bluegrass Water Utility Operating Company, LLC for an Adjustment of Sewage Rates* (Ky. PSC Feb. 14, 2023), final Order at 42.

³⁰ See Case No. 2022-00216, Aug. 8, 2022 Application, Exhibit 24 – Cost of Installation.

³¹ See Case No. 2020-00290, *Electronic Application of Bluegrass Water Utility Operating Company, LLC for an Adjustment of Rates and Approval of Construction* (Ky. PSC Aug. 2, 2021), Order at 24–25.

system but rather is simply proposing to install RME comparable to those approved in Case No. 2022-00216³² on additional systems. Thus, the Commission finds that the capital outlay necessary for RME installation on the Yung Farm, Commonwealth Wastewater, and Magruder Village systems will not materially affect the financial condition of Bluegrass Water.

Bluegrass Water's evidence similarly indicates that the projects at the Yung Farm, Commonwealth Wastewater, and Magruder Village systems will not conflict with existing certificates or services of other utilities, as the systems will be installed exclusively to assist Bluegrass Water in monitoring facilities in its own service territory. Thus, the Commission finds that Bluegrass Water's installation of RME at those systems will not conflict with the certificates or service of another utility.

Based on the findings above, Bluegrass Water's proposal to install RME at the Yung Farm, Commonwealth Wastewater, and Magruder Village systems would be extensions in the ordinary course of business if the proposals will not result in wasteful duplication. However, while Bluegrass Water presented evidence that tends to support its assertion that its proposal will not result in wasteful duplication, additional discovery would be necessary to clarify the basis for Bluegrass Water's need and costs in order for the Commission to make a finding that Bluegrass Water's proposal will not result in wasteful duplication. Such discovery would turn this matter into an application for a CPCN, which would defeat the purpose of requesting a declaratory order that a CPCN is not required. Thus, the Commission, pursuant to 807 KAR 5:001, Section 19, declines to

³² Case No. 2022-00216, January 12, 2024 Order at 7.

make a finding regarding whether Bluegrass Water's proposal will result in wasteful duplication.

The absence of a finding regarding wasteful duplication should not be construed as a requirement that Bluegrass Water file a CPCN or that the Commission expects to exclude any costs associated with Bluegrass Water's proposal. Rather, as in the case of other extensions that otherwise meet the elements of the ordinary course of business exception, the Commission is simply reserving any judgement regarding whether Bluegrass Water's proposal will result in wasteful duplication until that issue arises, if ever, in a future proceeding in which Bluegrass Water seek rates to recover its costs associated with the investment. Although Bluegrass Water has proven an absence of wasteful duplication for comparable projects in Case No. 2022-00216, that may not necessarily be true for future systems based on the particular facts of a given case. However, as noted above, the Commission does find that Bluegrass Water's proposal meets the other requirements of the ordinary course of business exception. Thus, assuming it will not result in wasteful duplication, the Commission finds that Bluegrass Water's proposed RME projects at the three recently acquired systems would be extensions in the ordinary course of business, and therefore, would not require CPCNs.

Regarding future systems, the Commission declines to make a determination on whether the installation of RME on Bluegrass Water systems not in front of the Commission would be ordinary extensions in the usual course of business. The three facilities at issue in the present case are small and provide service to only 55 customers in total. It is possible that a future case could present facts that would require Bluegrass Water to seek a CPCN for the installation of RME. Thus, while Bluegrass Water, in its

discretion, may rely on reasoning in this case and other cases to determine whether a CPCN is necessary for future projects, the Commission declines to grant a declaratory order that future hypothetical projects, about which the facts are not all known, are extensions in the ordinary course of business.

The Commission finds that a deviation from 807 KAR 5:071, Section 7(4) allowing only three in-person inspections per week on systems with RME installed was previously granted in Case No. 2022-00216 and is applicable to future systems with RME installation.³³ Therefore, the deviation granted in Case No. 2022-00216 is applicable to the three facilities at issue in the present case.

IT IS THEREFORE ORDERED that:

1. Bluegrass Water's application for a declaratory order is granted in part and denied in part.
2. Assuming that it will not result in wasteful duplication, the installation of RME at Bluegrass Water's sewage facilities located at Yung Farm, Commonwealth Wastewater, and Magruder Village is an ordinary extension in the usual course of business, and a CPCN, pursuant to KRS 278.020(1), is not required for the projects. The Commission declines to extend this decision to future projects not currently in front of the Commission.
3. Bluegrass Water's plan to perform three in-person inspections per week at Yung Farm, Commonwealth Wastewater, and Magruder Village wastewater facilities after remote monitoring equipment is installed is approved as assuring safe and adequate operation of its facilities and compliance with Commission rules.


³³ Case No. 2022-00216, Aug. 02, 2023 final Order at 9.

4. Bluegrass Water's September 19, 2024 motion for procedural schedule is made moot by this Order and therefore rejected by the Commission.

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

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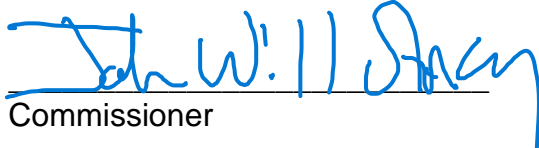
PUBLIC SERVICE COMMISSION



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