

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DELTA)	
NATURAL GAS COMPANY, INC. FOR A)	
DECLARATORY ORDER THAT THE)	
REPLACEMENT OF ENCODER RECEIVER)	CASE NO.
TRANSMITTER METERS WITH SIMILAR)	2024-00135
METERS ARE ORDINARY EXTENSIONS IN THE)	
USUAL COURSE OF BUSINESS AND DO NOT)	
REQUIRE A CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY)	

ORDER

On May 7, 2024, Delta Natural Gas Company, Inc. (Delta), filed an application for a declaratory order, pursuant to 807 KAR 5:001, Section 19, that the replacement of encoder receiver transmitter (ERT) modules and meters with new meters with integrated ERT modules is an ordinary extension in the usual course of business and does not require a Certificate of Public Convenience and Necessity (CPCN). 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

Delta is a public utility as defined by KRS 278.010(3)(a) that provides gas services to about 39,366 residential, commercial, and industrial customers in Bath, Bell, Bourbon, Clark, Clay, Estill, Fayette, Fleming, Floyd, Garrard, Jackson, Jessamine, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lincoln, Madison, Magoffin, Martin, Mason, Menifee, Montgomery, Perry, Pike, Powell, Robertson, Rowan, and Whitley counties.² As of 2023, Delta had a net plant in service of \$313,869,521.³

To measure gas usage, Delta utilizes a diaphragm meter.⁴ From 1996 to 2003, Delta installed Itron 40 ERT modules on each of its meters to allow radio frequency readings of the meters rather than manually reading the meters.⁵ Delta indicated that the Itron 40 ERT modules have a useful life of about 20 years.⁶ As a result of the Itron 40 ERT modules reaching the end of their service life, Delta began replacing the Itron 40 modules in 2016 with the Itron 100 ERT modules.⁷ Delta has replaced approximately 32,000 of its 40,000 Itron 40 ERT modules with the Itron 100 ERT modules.⁸

At present, Delta can no longer reliably obtain Itron 100 modules because the manufacturer of the Itron 100 modules is having difficulty sourcing parts.⁹ These

² *Annual Report of Delta Natural Gas Company, Inc. to the Public Service Commission for the Year Ended December 2023* (2023 Delta's Annual Report), at 4–5.

³ 2023 Delta's Annual Report at 14.

⁴ Application at 2.

⁵ Application at 2.

⁶ Application at 2.

⁷ Application at 2.

⁸ Application at 2.

⁹ Application at 2.

manufacturing challenges have prohibited Delta from timely obtaining Itron 100 replacement modules. Delta anticipates the difficulty of sourcing Itron 100 parts will not abate and has therefore been considering other replacement options to the Itron 100.¹⁰

In searching for a replacement for the Itron 100 module, Delta reviewed alternative replacement modules including Advanced Metering Infrastructure (AMI) options.¹¹ However, Delta does not desire a wholesale change to its meter reading technologies at this time.¹² Delta stated that it prefers a minor change to its assets instead of utilizing new technologies that would need to be installed in an accelerated timeframe with greater capital costs.¹³

After considering various replacement options, Delta is proposing to transition from its current Honeywell American meter base with Itron 100 ERT modules to the Intelis 250 meter with an integrated ERT module.¹⁴ The lead time for Delta to obtain Intelis 250 meters is six months and the meters with integrated ERT modules are compatible with Delta's current radio meter-reading capabilities.¹⁵ Furthermore, the Intelis 250 meter with integrated ERT module has an automatic shutoff feature and a remote disconnection feature that Delta's current meter and module do not possess.¹⁶

¹⁰ Application at 3.

¹¹ Application at 7.

¹² Application at 7.

¹³ Application at 7.

¹⁴ Application at 3.

¹⁵ Application at 3.

¹⁶ Application at 4.

Delta does not plan to retire any current meters or ERT modules until the units are fully depreciated.¹⁷ Delta proposes to install the first tranche of Intelis 250 meters at premises where the ERT has been in service for 20 or more years.¹⁸ At these locations, Delta will remove the meter and ERT, and if the meter is not fully depreciated and is in sufficient working condition, the meter will be placed back into Delta's inventory for future use.¹⁹

Delta proposes to convert its pending order of 4,000 Itron 100 modules to 1,000 Intelis 250 meters for delivery by year-end 2024.²⁰ In 2025, Delta would then purchase 7,000 Intelis 250 meters.²¹ At the completion of the 2024 and 2025 orders, all of Delta's original ERTs will have been replaced. Beginning in 2026, Delta plans to order 500 Intelis 250 meters each year, which corresponds with the number of meters it targets to replace annually.²²

As a result of this proposed path forward in replacing its meters and modules, Delta has filed an application for an order declaring that a CPCN is not necessary for the proposed replacement initiative. In its application, Delta argues that the replacement of its meters and ERT modules with the Intelis 250 meter with integrated ERT module are ordinary extensions in the usual course of business that do not require a CPCN. Delta maintains that transitioning from one model ERT meter to another ERT meter will not

¹⁷ Application at 6.

¹⁸ Application at 6.

¹⁹ Application at 6–7.

²⁰ Application at 7.

²¹ Application at 7.

²² Application at 7.

result in wasteful duplication of facilities because each of Delta's customers requires a meter to measure gas usage and Delta can no longer reliably source replacement ERT modules.²³ Delta asserts that by only replacing the meters within its existing service territory, Delta is not competing with any other existing utility.²⁴

Lastly, Delta contends that the capital outlay of its proposed replacement would not materially affect its existing financial condition because it claims that it represents less than one percent of its net utility plant. If Delta replaces all 40,000 of its meters, the cost difference between continuing to replace its Itron 40 modules with Itron 100 modules and replacing its Itron 40 modules with the Intelis 250 meter with integrated ERT modules is roughly [REDACTED] dollars to be incurred over a period of 20 years.²⁵ In 2023, Delta reported its net utility plant as \$313,869,521. Thus, the [REDACTED] dollar difference between Itron 100 modules and Intelis 250 meters is [REDACTED] of Delta's reported 2023 net utility plant.²⁶

LEGAL STANDARD

Pursuant to 807 KAR 5:001, Section 19, the Commissioner may, upon application by a person substantially affected, "issue a declaratory order. . . with respect to the

²³ Application at 6.

²⁴ Application at 8.

²⁵ Application at 8.

²⁶ Application at 8.

meaning and scope of an order or administrative regulation of the commission or provision of KRS Chapter 278.”²⁷ 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.²⁸

Any factual allegation in an application for a declaratory order must be supported by an affidavit or verified.²⁹ The Commission “may dispose of an application for a declaratory 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.³⁰

DISCUSSION

Pursuant to KRS 278.020(1), 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 the Commission. To obtain a CPCN, the utility must demonstrate a need for such facilities and an absence of wasteful duplication.³¹

²⁷ 807 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).

²⁸ 807 KAR 5:001, Section 19(2).

²⁹ 807 KAR 5:001, Section 19(6).

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

³¹ *Kentucky Utilities Co. v. Pub. Service Comm’n*, 252 S.W.2d 885 (Ky. 1952).

“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.³²

“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.”³³ To demonstrate that a proposed facility does not result in wasteful duplication, the Commission has held that an applicant must demonstrate that a thorough review of all reasonable alternatives has been performed.³⁴ Selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.³⁵ All relevant factors must be balanced.³⁶

³² *Kentucky Utilities Co. v. Pub. Service Comm’n*, 252 S.W.2d at 890.

³³ *Kentucky Utilities Co. v. Pub. Service Comm’n*, 252 S.W.2d at 890.

³⁴ 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).

³⁵ See *Kentucky Utilities Co. v. Public Service Comm’n*, 390 S.W.2d 168, 175 (Ky. 1965).

³⁶ 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.

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.

Accordingly, 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 financial condition of the utility involved or to require an increase in utility rates.”³⁷

As an initial matter, while Delta’s application meets the requirements of 807 KAR 5:001, Section 19, Delta’s application was ambiguous regarding whether it was requesting a declaration regarding the replacement of the Itron 100 modules when the Itron 100 modules reach the end of their service lives beginning in or about the year 2036 (based on Delta’s estimated 20-year service life), or whether it was requesting a declaration regarding the replacement of the remaining 8,000 Itron 40 modules.³⁸ To the

³⁷ 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.

³⁸ There is confusion regarding the extent of Delta’s request, because while Delta primarily discussed replacing the Itron 40 modules, of which about 7,000 remain in service, Delta supported its application by discussing the cost of replacing all 40,000 of its meters and modules with Intelis 250 meters.

extent that Delta is requesting a declaratory order as to the replacement of the Itron 100 modules and the associated meters, the Commission finds that such an order would be premature, because Delta's needs, the cost of equipment, and the availability of equipment are likely to change significantly between now and then such that it would be difficult or impossible for the Commission to state that such a project is in the ordinary course of business.³⁹ Conversely, Delta's immediate need is for the replacement of the 8,000 Itron 40 modules that have reached the end of their service lives as well as the ongoing replacement of meters on an annual basis for maintenance reasons as part of normal operations. Thus, pursuant to 807 KAR 5:001, Section 19, the Commission declines to issue a declaratory order regarding whether the replacement of the Itron 100 modules and the associated meters with the Intelis 250 gas meters would be in the ordinary course of business, but will address whether Delta's replacement of the remaining 8,000 Itron 40 modules and associated meters with the Intelis 250 gas meters and its replacement of about 500 meters a year would be in the ordinary course of business.

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, since a finding that a project will not

³⁹ KRS 278.020(1)(e) implicitly recognizes that CPCNs may become stale over time by requiring that they be exercised within one year, with some exceptions. By the same reasons, it would be illogical to issue a declaratory order finding that a project does not require a CPCN over a decade in advance.

result in wasteful duplication would be necessary for the Commission to grant a CPCN.⁴⁰ 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,⁴¹ and has recently generally found that extensions that approach 5 percent of a utility's net plant in service will do the same.⁴² 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.⁴³ However, evidence other than the relationship of the capital outlay to the net plant in

⁴⁰ Case No. 2023-00415, *Electronic Application of Kentucky Utilities Company and Louisville Gas and Electric Company for a 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 Extensions in the Usual Course of Business and do not require a Certificate of Public Convenience and Necessity* (Ky. PSC Apr. 4, 2024), Order 12–13.

⁴¹ 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 utilities net plant in service was material and, therefore, required a CPCN).

⁴² 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% of the utilities net plant in service).

⁴³ 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.

service is also considered.⁴⁴ 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, the evidence indicates Delta's proposal to replace its 8,000 remaining Itron 40 modules and associated Honeywell American meters will result in a capital outlay, excluding the cost of installation, of about [REDACTED] which is approximately [REDACTED] percent of Delta's net plant in service of about \$313 million.⁴⁵ Even if that amount doubled with the cost of installation, only be approximately [REDACTED] percent of Delta's net plant in service of about \$313 million and well under capital outlays that the Commission has previously found fit within the ordinary course of business exception. Thus, the Commission finds that Delta's proposal to replace the 8,000 remaining Itron 40 modules and associated Honeywell American meters with the Intelis 250 gas meters will not involve sufficient capital outlays to materially affect Delta's existing financial condition.

⁴⁴ 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.").

⁴⁵ It should be noted that Delta's application looked at the cost difference between the status quo and the proposed project. That is not the correct metric for determining whether the capital outlay will materially affect the existing financial condition of the utility, because it does not account for the full capital outlay.

Evidence submitted by Delta also indicates that its proposal to replace the 8,000 remaining Itron 40 modules and associated Honeywell American meters with Intelis 250 meters with an integrated ERT module will not result in wasteful duplication or conflict with the existing certificates or service of other utilities operating in the same area. Delta's Itron 40 modules are reaching the end of their service lives, and therefore, must be replaced. Delta has had issues obtaining the Itron 100 modules to replace the Itron 40 modules, and therefore, investigated other options to replace the aging modules. Based on its review of the options, Delta chose to replace its remaining Itron 100 modules and the associated Honeywell American meters with the Intelis 250 meters, primarily because they would function with Delta's existing meter reading system like the 32,000 Itron 100 modules Delta recently installed. Although the Honeywell American meter will be replaced as well, the replacement of the Itron 40 module with the Intelis 250 is a one-for-one swap of meters and modules that currently exist on Delta's gas network. Delta is not expanding its gas network or adding additional customers, because of this project proposal. Furthermore, Delta states that as meters that have not reached the end of their service life are replaced with the Intelis 250, Delta will store said meters to be used in the future for Honeywell American meter replacement or maintenance. For those and other reasons, the Commission finds Delta's proposal to replace the 8,000 remaining Itron 40 modules and associated Honeywell American meters with the Intelis 250 gas meters will not result in wasteful duplication or conflict with the existing certificates or service of other utilities, and therefore, finds that Delta's application should be granted with respect to that portion of its Application.

With respect to Delta's proposal to replace an additional 500 meters a year with Intelis 250 gas meters, Delta indicated the proposal is not part of a larger project to replace all Honeywell American meters and the newly installed Itron 100 modules before they reach the end of their useful lives, because Delta indicated that equipment would not be replaced before the end of its useful life. Rather, the evidence indicates that the 500 meters Delta intends to purchase a year will be used to replace meters that are damaged or no longer functioning properly as part of Delta's normal operations. Such small purchases for various unrelated needs that are likely to arise in normal operations would not materially affect Delta's existing financial condition and would not conflict with the existing certificates or service of other utilities. Further, there is no evidence that Delta would make such purchases and replace such meters on an ongoing basis without a need to do so, and it is logical that Delta would need to replace a certain number of meters each year due to normal maintenance issues. However, there is no specific evidence as to the need or the extent of the need to replace meters on an ongoing basis. Thus, the Commission, pursuant to the discretion allowed by 807 KAR 5:001, Section 19, declines to make a finding regarding whether Delta's proposal to replace 500 meters a year for maintenance reasons with Intelis 250 gas meters will result in wasteful duplication.

The absence of a finding regarding wasteful duplication should not be construed as a requirement that Delta file a CPCN for the replacement of 500 meters a year on an ongoing basis or that the Commission expects to exclude any costs associated with such replacements. Rather, as in the case of other extensions that otherwise meet the elements of the ordinary course of business exception, the Commission expects that Delta will only make such replacements if needed and is simply reserving any judgement

regarding whether the replacement of 500 meters will result in wasteful duplication until that issue arises, if ever, in a future proceeding in which Delta seeks rates to recover their costs associated with the investment. However, as noted above, the Commission does find that Delta's replacement of 500 meters a year meets the other requirements of the ordinary course of business exception. Thus, assuming the ongoing replacement of about 500 meters a year will not result in wasteful duplication, the Commission finds that Delta's proposal would be an extension in the ordinary course of business, and therefore, would not require CPCNs.

IT IS THEREFORE ORDERED that:

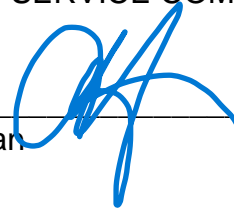
1. Delta's application for a declaratory order is granted in part and denied in part.
2. The replacement of the 8,000 Itron 40 modules that have reached the end of their service life and the associated meters with the Intelis 250 meters is an ordinary extension in the usual course of business, and a CPCN, pursuant to KRS 278.020(1), is not required for this project.
3. Assuming the replacements will not result in wasteful duplication, the ongoing replacements of about 500 meters and ERT modules a year with the Intelis 250 meters due to maintenance issues is an ordinary extension in the usual course of business, and a CPCN, pursuant to KRS 278.020(1), is not required.
4. Except with respect to the replacements discussed in ordering paragraph 3, the Commission declines to decide whether a CPCN is required for the future replacement of the 32,000 Itron 100s, or their respective meters, once either has reached the end of their service life.

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

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PUBLIC SERVICE COMMISSION

Chairman



Vice Chairman

Commissioner



ATTEST:



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