

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF BRACKEN)	
COUNTY WATER DISTRICT REQUEST FOR A)	
CERTIFICATE OF PUBLIC NEED AND)	
CONVENIENCE OR ALTERNATIVELY A)	
DECLARATORY ORDER ESTABLISHING THAT A)	
CERTIFICATE OF PUBLIC NEED AND)	CASE NO.
CONVENIENCE IS NOT NECESSARY; AS TO)	2024-00222
TRANSFER OF DEVELOPER'S WATER ASSETS;)	
AND APPROVAL OF THE WATER TRANSFER)	
ASSET CONTRACT, PURSUANT TO)	
KRS 278.020, 807 KAR 5:001, SECTION 15,)	
AND/OR 807 KAR 5:001, SECTION 19)	

ORDER

On July 12, 2024, Bracken County Water District (Bracken District) filed an application requesting approval of a Certificate for Public Convenience and Necessity (CPCN) for the transfer of water utility assets consisting of a new section of water line distribution system from Augusta Brooksville Bracken County Industrial Authority (ABBIA) pursuant to KRS 279.020(6), or alternatively, a declaratory order establishing that a CPCN is not necessary pursuant to 807 KAR 5:001, Section 19.

The Commission issued a procedural schedule on July 31, 2024. No requests to intervene have been made in this matter. Bracken District responded to one request for information from Commission Staff.¹ This matter is now before the Commission for a decision on the record.

¹ Bracken District's Response to Commission Staff's First Request for Information (Staff's First Request) (filed Aug. 22, 2024).

BACKGROUND

Bracken District is a water association organized pursuant to KRS Chapter 74 that provides water service to approximately 2,819 commercial and residential customers in Bracken, Mason, Pendleton, and Robertson counties.² Bracken District had a net plant in service of \$16,304,885.³ Bracken District's most recent rate case was filed in 2022.⁴

ABBIA developed a water line distribution system within its industrial development area, located next to a Bracken District water main and desired to gift the water line distribution system and its components to Bracken District.⁵ ABBIA agreed, upon Commission approval, to transfer all assets of the completed water distribution system along the existing water main of Bracken District, which runs parallel along the ABBIA public access road to the end of the development lots of the ABBIA. The new section of water line distribution system consists of the following components: 5,400 feet of eight-inch Polyvinyl chloride (PVC) water main, SDR 17 Class 250; tapping sleeve and valve; leak detection meter; three four-inch gate valves and boxes; two eight-inch gate valves and boxes; 40 feet of steel casing, bore, and jack; 60 feet of PVC casing, open cut; flush hydrant assembly; temporary blow off assembly; and a new customer meter set.⁶

Bracken District requested either a CPCN, or alternatively, a declaratory order establishing that a CPCN is not necessary for the transfer of water utility assets from

² *Annual Report of Bracken County Water District to the Public Service Commission for the Year Ending December 31, 2023* (2023 Annual Report) at 11, 12 and 49.

³ 2023 Annual Report at 16.

⁴ See Case No. 2021-00415, *Electronic Application of Bracken County Water District for a Rate Adjustment Pursuant to 807 KAR 5:076* (filed Jan. 27, 2022).

⁵ Application at 2.

⁶ Application at 2-3.

ABBIA.⁷ ABBIA stated that it “has not and does not distribute water; nor has it or does it provide water to the public or to the public for compensation.”⁸ ABBIA “developed the water distribution system to increase developmental prospects in the industrial park.”⁹

Bracken District stated that the transfer of assets does not violate its tariff.¹⁰ The current tariff provides that Bracken District “has a no cost of any application that requires a line extension of less than fifty (50’) feet, and a cost provision with reimbursement for developments that request and/or require extensions over fifty (50’) feet, but no preclusion of accepting and/or contracting for transfer of assets.”¹¹

Furthermore, Bracken District asserted that the project has been approved for a Kentucky Development Product Initiative Grant (KDPI) to cover half the cost of engineering fees and construction bids.¹² ABBIA paid the remaining fees associated with the project.¹³

Furthermore, the project was engineered by Bluegrass Engineering, Inc. and was completed in accordance with the engineering specifications and requirements of Bluegrass Engineering, Inc.¹⁴ Finally, all plans and specifications were approved with

⁷ Application at 2.

⁸ Application at 2 and Bracken District’s Response to Staff’s First Request for Information, Item 1.

⁹ Application at 8.

¹⁰ Application at 3.

¹¹ Application at 3. See also copies of Bracken District Tariff, pages 30-38 provided as Exhibit D of application.

¹² Application at 3.

¹³ Bracken District’s Response to Staff’s First Request for Information, Item 3.

¹⁴ Application at 3.

respect to sanitary features of the design by the Energy and Environment Cabinet Division of Water.¹⁵

LEGAL STANDARD

KRS 278.020(6) and 278.020(7) require prior Commission approval of the transfer or control of any “utility.” KRS 278.010(3)(d) defines a utility as “[t]he diverting, developing, pumping, distributing, or furnishing of water to or for the public, for compensation.” Because KRS 278.020(6) and (7) apply only to the transfer of jurisdictional utilities, the Commission previously held on some occasions that the acquisition of a non-jurisdiction utility by a jurisdictional utility did not require any prior approval pursuant to KRS 278.020. However, in Case No. 2020-00028,¹⁶ the Commission held that a utility purchasing a non-jurisdictional system must obtain a CPCN pursuant to KRS 278.020(1)(a) before it commences operating the non-jurisdictional utility. Because the acquisition of a non-utility’s system may impact a jurisdictional utility’s ability to provide adequate and reasonable service, either to customers of the system to be acquired or the customers of the acquiring utility, requiring approval under KRS 278.020 ensures that the Commission discharges its statutory duty to confirm that the acquiring utility’s ability to provide adequate service at a fair, just, and reasonable rates is not impaired.

¹⁵ See Bracken District’s Response to Staff’s First Request, Exhibit B.

¹⁶ Case No. 2020-00028, *Electronic Proposed Acquisition by Bluegrass Water Utility Operating Company, LLC of Wastewater System Facilities and Subsequent Tariffed Service to Users Presently Served by Those Facilities* (Ky. PSC June 19, 2020), Order.

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:

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 financial condition of the utility involved or to require an increase in utility rates.”¹⁷

A utility may request a declaratory Order pursuant to 807 KAR 5:001 Section 19. The Commission “. . . may 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.”¹⁸

¹⁷ 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.

¹⁸ 807 KAR 5:001 Section 19(1).

DISCUSSION

Having reviewed the evidence, the Commission finds that ABBIA, the developer of a water line distribution system, is not a “utility” subject to the Commission’s jurisdiction pursuant to KRS 278.010(3), and thus, neither KRS 278.020(6) nor (7) are applicable to the proposed transaction. Furthermore, the Commission finds that a CPCN is not required.

ABBIA not a utility within the Commission’s jurisdiction, nor have the water assets installed by ABBIA previously been used to provide water services. This case is distinguishable from previous cases where the Commission has held a utility must obtain a CPCN for a transfer from a non-utility¹⁹ as this is merely a transfer of assets that are not in use, and from a developer that has not been providing any utility services. Bracken District does not have a tariff provision inhibiting or prohibiting this transaction.²⁰ Additionally, Bracken District provided documentation that ABBIA completed payment for all engineering fees and costs in connection with this project, and Bracken District is not obligated to pay any of those costs²¹ or reimburse ABBIA for the expenses.²²

The Commission finds that, based on the evidence discussed above, the transfer of this asset will serve a new area and it will not compete with another utility. In addition, in Bracken District’s 2023 Annual Report, the utility reported a net plant in service of

¹⁹ See Case No. 2020-00028, Aug. 2, 2021 Order; 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).

²⁰ Application at 3.

²¹ \$333,407.22.

²² See Bracken District’s Response to Staff’s First Request, Item 3, and Application at 3.

\$16,304,885.²³ Adding the water distribution system assets is equal to adding .02 percent of the utility's net plant in service. As such, the Commission finds that the investment does not involve sufficient capital outlay to have a material impact on the utility's financial condition.

The Commission notes that neither Bracken District nor ABBIA is being unjustly enriched or unduly burdened in this transaction. The Commission continues to encourage utilities to seek review of transactions pursuant to 807 KAR 5:001 Section 19, KRS 278.020 or, in the alternative, a request for either a declaratory Order or CPCN. Even a "gift" of an asset, as described in this application, may severely impact a utility's financial condition depending on the ongoing operational, maintenance and depreciation expense.

IT IS THEREFORE ORDERED that:

1. The transfer of assets from ABBIA to Bracken District as proposed in the application is approved and Bracken District's application for a declaratory order is granted.
2. Bracken District shall file with the Commission a report on the status of the efforts to complete any approved transfer that does not close within 90 days of the date of entry of this Order.
3. Any material revision to the proposed transaction shall require approval by the Commission in order for the amendment to be effective.
4. Bracken District shall file a notice of accounting for the transaction, including each account affected by this transfer within 30 days after the transaction closes.

²³ 2023 Annual Report at 16.

5. Any documents filed pursuant to ordering paragraphs 2, 3 and 4 shall reference this case number and shall be filed in Bracken District's post-case correspondence file.

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

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PUBLIC SERVICE COMMISSION

Chairman



Commissioner



Commissioner



ATTEST:



Executive Director

Case No. 2024-00222

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