

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF NORTH)	CASE NO.
NELSON WATER DISTRICT FOR A)	2024-00347
DECLARATORY ORDER)	

ORDER

On November 8, 2024, North Nelson Water District (North Nelson District) filed an application requesting a declaratory order establishing that a Certificate of Public Convenience and Necessity (CPCN) is not required pursuant to 807 KAR 5:001, Section 19. North Nelson District responded to one request for information from Commission Staff. This matter is now before the Commission for a decision.

BACKGROUND

North Nelson District is a water district organized pursuant to KRS Chapter 74 that provides water service to approximately 5,111 customers in Bullitt, Nelson, and Spencer counties, Kentucky.¹ North Nelson District had a net plant in service of \$11,425,165.² North Nelson District's most recent rate case was filed on August 7, 2024.³

¹ *Annual Report of North Nelson Water District to the Public Service Commission for the Year Ending December 31, 2023* (2023 Annual Report) at 49.

² 2023 Annual Report at 16.

³ See Case No. 2024-00234, *Electronic Application of North Nelson Water District for a Rate Adjustment Pursuant to 807 KAR 5:076* (filed Aug. 7, 2024).

In Case No. 2024-00335,⁴ the Commission suspended the proposed tariff and rate for Louisville Water Company (Louisville Water) to North Nelson District and North Nelson District to the city of Bardstown (Bardstown). The contracts in that case are part of an overarching project to provide more water to the distilleries in the area. North Nelson District stated that it, along with Bardstown, needed additional potable water to support growth within the counties, and, more specifically, new and expanded distilleries.⁵ North Nelson District asserted that by 2030, Bardstown’s estimated demand for water from distilleries alone will be 2 million gallons per day (MGD).⁶ Bardstown’s current average daily total water sales are approximately 4.2 MGD but are estimated to reach 6 MGD within the next five years.⁷

To address the need and support local growth, the Nelson County Water Supply Project (Project) was proposed, which consists of constructing a large diameter water transmission main line along Kentucky Highway 245 from Bardstown to the existing master meter between North Nelson District and Louisville Water.⁸ North Nelson District asserted that the project was the “most feasible and cost-effective means of securing a supplemental source of finished water to Bardstown and Nelson County” due to the

⁴ Case No. 2024-00335, *Electronic Tariff Filing of Louisville Water Company of a Wholesale Water Purchase Agreement With North Nelson Water District and a Wholesale Water Purchase Agreement Between North Nelson District and the City of Bardstown* (filed Sept. 26, 2024).

⁵ Application at 4.

⁶ Application at 5.

⁷ Application, Exhibit 3 at 4.

⁸ Application at 4.

location of an existing master meter near the intersection of Kentucky Highway 1604 and Kentucky Highway 245.⁹

As part of the overall project, North Nelson District, Nelson County Fiscal Court, and Bardstown entered into an agreement stating that North Nelson District was “responsible for overseeing the engineering design of the Project, bidding the Project, and overseeing the construction of the Project.”¹⁰ Furthermore, the agreement provided that, upon completion, North Nelson District would own the water transmission main and be responsible for maintaining and operating the service line.¹¹

The Project is broken into two phases. Phase 1, which is already completed, consisted of constructing 7,730 feet of water transmission along Kentucky Highway 245.¹² Phase 1 cost \$3,300,000 and was “funded by Nelson Fiscal Court using \$3,300,000 allocated to Nelson County by the American Rescue Plan Act of 2021 (ARPA).”¹³

Phase 2 of the project, the subject of this application, consists of approximately 38,500 linear feet of 24-inch water transmission main and has an estimated cost of \$16,600,000.¹⁴ North Nelson District provided a map and description of the proposed route of the transmission main¹⁵ as well as plans and specifications for the proposed

⁹ Application at 4.

¹⁰ Application at 5.

¹¹ Application at 5.

¹² Application at 10.

¹³ Application at 10.

¹⁴ Application at 10, 12.

¹⁵ Application at 10; *See also* Exhibits 7 and 8.

project.¹⁶ Furthermore, North Nelson District stated that the entirety of the project will be funded by grant funding, and it will not use any of its own money or borrow any additional funds.¹⁷ North Nelson District received a total of \$17,837,040 in grant funding, leaving an estimated \$1.2 million in surplus grant funding, if needed.¹⁸ Lastly, North Nelson District asserted that it “will not issue any evidence of indebtedness to fund the Project or adjust its rates for water service to fund the Project.”¹⁹

The Project, as proposed, would run through the middle of North Nelson District’s service area – through Deatsville and Rooster Run communities.²⁰ This is the “growth area of the District” and includes the “hospital, numerous medical offices, several apartment buildings, Thomas Nelson High School, dozens of commercial properties, and too many residential subdivisions to count.”²¹ The area is currently served by a “12-inch water main starting at Louisville Water’s master meter serving the District and extending to Bardstown.”²² North Nelson District stated that installing a “24-inch main water line to serve Bardstown, will provide a redundant supply of water in the case of a major water line break.”²³

¹⁶ Application at 10; See *also* Exhibits 9 and 10.

¹⁷ Application at 11.

¹⁸ Application at 11.

¹⁹ Application at 12.

²⁰ Application at 7.

²¹ Application at 7.

²² Application at 7.

²³ Application at 7.

North Nelson District received several bids for Phase 2 of the Project, and Dirt Works Unlimited, LLC was awarded the job with the lowest bid of \$10,653,157.²⁴

LEGAL STANDARD

KRS 278.020(1)(a) provides that “no person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010.”

An exception to the CPCN requirement is provided in KRS 278.020(1)(a)(3) for:

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 as defined in the uniform system of accounts 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 (\$500,000) dollars; 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.²⁵

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

²⁴ Application at 10.

²⁵ KRS 278.020(1)(a)(3).

are in the general or contiguous area in which the utility renders services, 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.”²⁶

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.”²⁷

DISCUSSION

Having reviewed the evidence, the Commission finds the project is a water main extension and improvement project; North Nelson District is a Class A utility; and will not incur obligations to complete the project requiring approval under KRS 278.300. Furthermore, the Commission finds the project will not compete or conflict with any other existing utility; it will not result in sufficient capital or material outlay; or immediately impact

²⁶ 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.

²⁷ 807 KAR 5:001 Section 19(1).

the financial condition of the utility in a manner resulting in a rate case. Therefore, the Commission finds an application for a CPCN should not be required as North Nelson District meets all requirements outlined in the KRS 278.020(1)(a)(3) and exception 807 KAR 5:001 Section 15(3).

The Commission notes that, although this water line extension and improvement project does not require a CPCN application, this Order should not be construed as to relieve any similar project or utility of its obligations pursuant to KRS 278.020; a CPCN may be required even if the project does not result in indebtedness. Financing is only one element in evaluating whether a CPCN application is required. However, North Nelson District provided that there “will be no need to increase rates to address additional operating and maintenance expenses because Louisville Water will pump water from its infrastructure system through the 8.75 miles of North Nelson District’s new Water Transmission Main directly to Bardstown”²⁸ without flowing through North Nelson District’s water storage tanks or existing water lines.²⁹ North Nelson District asserted that it would not incur any obligations requiring Commission approval under KRS 278.300, will finance the Project through grant funding and without any loans, and will not increase rates to address any debt service.³⁰ Furthermore, North Nelson District stated it “fully expects that the net annual revenues from wholesale water sales to Bardstown will offset the increased depreciation expenses.”³¹

²⁸ Application at 14-15.

²⁹ Application at 15.

³⁰ Application at 14.

³¹ Application at 15.

North Nelson District stated that a Cost-of-Service Study (COSS) would be performed once the final cost of the project is known to determine the wholesale rate it would charge Bardstown after December 31, 2026.³² If the projects are not completed by December 31, 2026, North Nelson District will not be required to purchase the minimum amount from Louisville Water set forth in that agreement.³³ Furthermore, the Agreement with Bardstown specifically requires North Nelson District to charge Bardstown cost-based rates, as defined in paragraph 11 of the agreement,³⁴ and therefore, will not require any rate increase to current customers.³⁵ Additionally, even if Bardstown does not purchase the minimum annual amount required by the agreement with North Nelson District, Bardstown is required to pay North Nelson District the difference between the cost of the minimum annual amount and the cost of the actual amount of water purchased to guarantee North Nelson District is paid regardless of whether Bardstown uses the minimum gallons per day outlined in the agreement.³⁶

IT IS THEREFORE ORDERED that:

1. A CPCN is not required, and North Nelson District's application for a declaratory order is granted.
2. North Nelson District shall file with the Commission a copy of the Cost-of-Service Study, once completed.

³² Application at 15. This is also subject to Commission approval of the contracts and rates currently suspended for further investigation in Case No. 2024-00335.

³³ North Nelson District's Response to Commission Staff's First Request for Information (Staff's First Request) (filed Jan. 3, 2024), Item 1a.

³⁴ Application, Exhibit 12 at 12, paragraph 11.

³⁵ Application at 15.

³⁶ North Nelson District's Response to Staff's First Request, Item 1a.

3. Any material revision to the proposed transaction or agreement shall require approval by the Commission in order for the amendment to be effective.

4. North Nelson District shall file a notice of accounting for the project, including each account affected by the project within 30 days after the completion of the project.

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

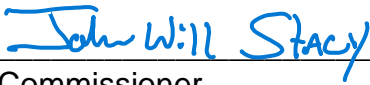
6. This case is closed and removed from the Commission's docket.

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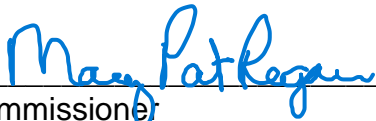
PUBLIC SERVICE COMMISSION



Chairman



Commissioner



Commissioner

ATTEST:



Executive Director

ENTERED
JAN 28 2025
KENTUCKY PUBLIC SERVICE COMMISSION ^{jdc}

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