

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF CRITTENDEN-)	
LIVINGSTON COUNTY WATER DISTRICT FOR A)	
DECLARATORY ORDER OR, IN THE)	CASE NO.
ALTERNATIVE, FOR A CERTIFICATE OF PUBLIC)	2024-00386
CONVENIENCE AND NECESSITY)	

ORDER

On December 10, 2024, Crittenden-Livingston County Water District, (Crittenden-Livingston District) filed an application requesting a declaratory order that the planned construction of a 300,000-gallon underground water storage facility at the treatment plant, commonly referred to as a clearwell (clearwell), is an ordinary extension of existing facilities in the usual course of business pursuant to KRS 278.020(1)(a) and 807 KAR 5:011(15)(3), or in the alternative, a certificate of public convenience and necessity (CPCN). There are no intervenors in this matter. Crittenden-Livingston District responded to one request for information from Commission Staff. This matter now stands submitted to the Commission for a decision.

BACKGROUND

Crittenden-Livingston District is a water district organized pursuant to KRS Chapter 74 that provides water service to approximately 3,731 customers in Crittenden and Livingston counties.¹ Crittenden-Livingston District also sells water at wholesale to the

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

cities of Marion, Grand Rivers, Smithland, and Salem, as well as Ledbetter Water District.² Crittenden-Livingston District's most recent rate case was filed on January 27, 2025.³

Crittenden-Livingston District proposed to construct a 300,000-gallon clearwell at the Crittenden-Livingston District Treatment Plant.⁴ The estimated cost of the proposed clearwell is \$3,600,000.⁵ Crittenden-Livingston District stated that the clearwell would be funded by Community Development Block Grant Funds in the amount of \$2,880,000, with additional funding provided by a \$10,000,000 grant awarded by the General Assembly.⁶ Crittenden-Livingston District stated that the clearwell is necessary to increase water treatment capacity and would help supply more finished water to the city of Marion where a State of Emergency was declared on June 28, 2024, due to an ongoing water shortage.⁷ Crittenden-Livingston District stated that the clearwell would help supply approximately 100,000 to 140,000 gallons per day towards the city of Marion's approximate 200,000 gallons per day demand during peak periods.⁸ Crittenden-Livingston District further

² Application at 2. Commission Staff believes that this may be a typo and should in fact have been Green Rivers based on other information in the Application at mentioned below.

³ Case No. 2024-00278, *Electronic Application of Crittenden-Livingston County Water District for an Alternative Rate Filing Pursuant to 807 KAR 5:076* (filed Jan. 27, 2025).

⁴ Application at 2.

⁵ Application at 3.

⁶ Application at 4.

⁷ Application at 2 and Exhibit 1.

⁸ Crittenden-Livingston District's Response to Commission Staff's First Request for Information (Crittenden-Livingston District's Response to Staff's First Request) (filed Jan. 15, 2025), Item 1-3).

stated that the cities of Green Rivers⁹ and Salem¹⁰ are experiencing growth and the clearwell would allow it to continue to supply water to meet the needs of its wholesale customers.¹¹ Crittenden-Livingston District stated that it currently is at maximum capacity during peak demand periods and that it does not have any reserve capacity to support any new industry that would require a significant supply of water.¹² Crittenden-Livingston District further stated that the plant runs on a 24-hour basis and at times, peak demand is in excess of 95 percent of the plant's design capacity.¹³ Crittenden-Livingston District stated that it has plans to expand the plant's daily capacity from two million gallons per day to four million gallons per day to cover existing needs and to allow for additional growth.¹⁴ Crittenden-Livingston District further stated that the clearwell would continue to be in use after the full plant expansion.¹⁵

LEGAL STANDARD

KRS 278.020(1)(a) generally requires a utility to obtain a CPCN before beginning the construction of any plant, equipment, property, or facility. However, a CPCN is not

⁹ Green Rivers is a wholesale customer of Crittenden-Livingston District. Green Rivers is expected to have continued growth in the area. These developments include: a multi-unit condominium development; a Wyndham Resorts development consisting of 20 cottages, a 60-room hotel, two restaurants, two bars, a 100-slip marina, a wedding event area, and 40 residential lots; and a bourbon and moonshine distillery. See Crittenden-Livingston District's Response to Staff's First Request, Item 1-2.

¹⁰ Salem is a wholesale customer of Crittenden-Livingston District. Salem has announced a major expansion, but it is currently unclear as to how it will impact water usage.

¹¹ Crittenden-Livingston District's Response to Staff's First Request, Item 1-2.

¹² Application at 3.

¹³ Crittenden-Livingston District's Response to Staff's First Request, Item 1-2.

¹⁴ Application at 3.

¹⁵ Application at 3.

required for “ordinary extensions of existing systems in the usual course of business.”¹⁶ An “ordinary extension . . . in the usual course of business” is not defined in KRS 278.020 or elsewhere in KRS Chapter 278. For that reason, the Commission promulgated 807 KAR 5:001, Section 15(3),¹⁷ 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 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.¹⁸

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 the 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 conditions of the utility involved or to require an increase in utility rates.”¹⁹

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

¹⁶ KRS 278.020(1)(a).

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 15(3).

¹⁹ Case No. 2000-00481, Aug. 30, 2001 Order at 4.

meaning and scope of an order or administrative regulation of the commission or provision of KRS Chapter 278.”²⁰ 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 on conclusion.²¹

Any factual allegation in an application for a declaratory order must be supported by an affidavit or verified.²² The Commission “may dispose of an application for a declaratory order solely on the basis of the written submissions filed”²³ or may allow for other actions, including additional discovery, to ensure that the record is complete.

DISCUSSION AND FINDINGS

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that the building of Crittenden-Livingston District’s proposed 300,000-gallon clearwell is an extension in the ordinary course of business and does not require a CPCN pursuant to KRS 278.020(1)(a). The proposed clearwell is needed to help combat the water shortage emergency in the city of Marion and to continue to provide wholesale service to the additional wholesale customers who are seeing continued

²⁰ 807 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).

²¹ 807 KAR 5:001, Section 19(2).

²² 807 KAR 5:001, Section 19(6).

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

growth in their areas. Additionally, Crittenden-Livingston District is at maximum capacity during peak demand periods. The additional clearwell would help alleviate water capacity issues during peak demand periods until a full plant extension can be built.

For these reasons, the Commission finds that the proposed clearwell would not create wasteful duplication.

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 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 Crittenden-Livingston District meets all requirements outlined in the KRS 278.020(1)(a)(3) and the exception 807 KAR 5:001 Section 15(3).

The Commission notes that, although this clearwell 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. Crittenden Livingston District asserted that it will finance the Project through grant funding and without any loans and will not increase rates to address any debt service. If the grant funding does not materialize, this Order should also not be construed as approval of any indebtedness for the project.

IT IS THEREFORE ORDERED that:

1. Crittenden-Livingston District's application for a declaratory is granted.

2. Crittenden-Livingston District does not need to obtain a CPCN, pursuant to KRS 278.020(1)(a), for the proposed 300,000-gallon clearwell as it is an ordinary extension in the usual course of business.

3. Crittenden-Livingston District shall file notice of completion of the 300,000-gallon clearwell within 30 days of its completion.

4. Any documents filed pursuant to ordering paragraph 3 herein shall reference this case number and shall be retained in the post-case correspondence file for this proceeding.

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

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PUBLIC SERVICE COMMISSION



Chairman



Commissioner



Commissioner

ATTEST:

 AP

Executive Director

ENTERED
MAR 04 2025_{AH}
KENTUCKY PUBLIC
SERVICE COMMISSION

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