

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF HENDERSON)	
COUNTY WATER DISTRICT FOR A)	
DECLARATORY ORDER OR ALTERNATIVELY A)	CASE NO.
CERTIFICATE OF PUBLIC CONVENIENCE AND)	2025-00280
NECESSITY AND ISSUANCE OF EVIDENCE OF)	
INDEBTEDNESS AND OTHER GENERAL RELIEF)	

ORDER

On August 29, 2025, Henderson County Water District (Henderson District) filed an application requesting (1) a declaratory order pursuant to 807 KAR 5:001, Section 19, that a Certificate of Public Convenience and Necessity (CPCN) for the construction and implementation of an Advanced Metering Infrastructure (AMI) system is not required pursuant to 807 KAR 5:001, Section 19, or alternatively, an order granting a CPCN for the same; (2) a declaratory order that Commission approval was not required pursuant to KRS 278.300 for Henderson District to enter into a grant agreement with the Henderson County Fiscal Court (Grant Agreement), or alternatively, an order approving or ratifying Henderson District's authority to enter into the Grant Agreement; and (3) a declaratory order that Henderson District is not required to file an amendment to its qualified infrastructure improvement plan (QIIP)¹ filed in Case No. 2023-00333.² Henderson

¹ Application (filed Aug. 29, 2025).

² Case No. 2023-00333, *Electronic Henderson County Water District Unaccounted for Water Loss Reduction Plan, Surcharge and Monitoring*.

District responded to one request for information from Commission Staff.³ This matter is now before the Commission for a decision on the merits.⁴

BACKGROUND

Henderson District is a Class A water district organized pursuant to KRS Chapter 74, that provides water service to approximately 6,486 customers in Henderson and Webster counties, Kentucky.⁵ Henderson District had total water operating revenues of \$3,743,755,⁶ and a net utility plant in service of \$11,909,839 for the 2024 calendar year.⁷ Henderson District stated that it purchases all of its water from the city of Henderson and the infrastructure required to provide water service to its customers includes over 459 miles of water line, 7 storage tanks, and 7 in-service pump stations.⁸

Henderson District's most recent rate case was completed on December 13, 2023, and Henderson District was authorized to assess a Water Loss Reduction Surcharge of \$1.87 per active meter per month for 48 months to fund necessary upgrades on its systems.⁹ Subsequently, the Commission initiated a separate action in Case No. 2023-

³ Henderson District's Response to Commission Staff's First Request for Information (Staff's First Request) (filed Oct. 30, 2025).

⁴ 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.

⁵ *Annual Report of Henderson County Water District to the Public Service Commission for the Year Ending December 31, 2024* (2024 Annual Report) at 12.

⁶ 2024 Annual Report at 20.

⁷ 2024 Annual Report at 16.

⁸ Application, Exhibit 2, Direct Testimony of Mark Julian (Julian Direct Testimony) at 31.

⁹ Case No. 2023-00101, *Electronic Application of Henderson County Water District for a Rate Adjustment Pursuant to 807 KAR 5:076* (Ky. PSC Dec. 13, 2023), Order at 23.

00333 to monitor Henderson District's water loss surcharge and ordered Henderson District to file all requests to use surcharge proceeds in the case record of that proceeding.¹⁰ Pursuant to the Commission's Order in Case No. 2023-00333, Henderson District filed a qualified infrastructure improvement plan and included a comprehensive unaccounted-for water loss reduction plan that establishes priorities and a time schedule for eliminating each source of unaccounted-for water loss, and provide a detailed spending plan for the proceeds of a surcharge.¹¹

In its request for a declaratory order, Henderson District explained that it lacked the necessary funding to make all the necessary improvements outlined in the QIIP¹² and sought grant opportunities to supplement the surcharge revenues and received \$3,000,000 in grant funding from the Henderson County Fiscal Court to support its water loss reduction initiative.¹³ Henderson District explained that after receiving board approval it entered into the Grant Agreement on May 28, 2025, which included a corrective action plan.¹⁴ Henderson District stated that the corrective action plan incorporated into the Grant Agreement with Henderson County Fiscal Court is consistent with the QIIP established in Case No. 2023-00101.¹⁵

¹⁰ See Case No. 2023-00333, *Electronic Henderson County Water District Unaccounted for Water Loss Reduction Plan, Surcharge and Monitoring* (Ky. PSC Dec. 13, 2023).

¹¹ Case No. 2023-00333, *Electronic Henderson County Water District Unaccounted for Water Loss Reduction Plan, Surcharge and Monitoring* (Ky. PSC Dec. 13, 2023).

¹² Application, Exhibit 2, Direct Testimony of Mark Julian (Julian Direct Testimony) at 38.

¹³ Application at 4.

¹⁴ Application at 4.

¹⁵ Julian Direct Testimony at 38.

Henderson District explained that the corrective action plan requires Henderson District to install valves where necessary to effectively isolate the five distribution management areas (DMA) and then install AMI cellular-based zonal and subzone meters, which will enable Henderson District to track consumption and detect leaks.¹⁶ Henderson District also stated that an AMI system will allow recovery lost revenue by increasing billed consumption, as accurate readings catch underreported consumption, so more water delivered is billed correctly, and less is lost due to meter inaccuracies or theft and estimation errors.¹⁷ Henderson District stated that the proposed project is necessary due to significant water loss attributed to aging infrastructure and outdated equipment and the proposed AMI meters directly targets the root causes of water loss by enabling rapid leak detection, precise water monitoring, and timely repairs.¹⁸ Henderson District asserted that water districts can recover up to 75 percent of water losses, often caused by leaks or underreporting, by switching to AMI meters.¹⁹

Henderson District requested that the Commission find that Commission approval was not necessary prior to Henderson District entering into the grant agreement.²⁰ or ratification of the authority to enter into the grant agreement.²¹ Henderson District explained that the grant agreement is intended to function as a traditional grant with no obligation to repay; however, the grant agreement does provide a remedy to Henderson

¹⁶ Julian Direct Testimony at 38

¹⁷ Julian Direct Testimony at 39.

¹⁸ Julian Direct Testimony 41.

¹⁹ Julian Direct Testimony at 39.

²⁰ Application at 7.

²¹ Application at 5.

County to request a refund of the grant funds if Henderson District does not fully complete the proposed project outlined in its Corrective Action Plan.²² Therefore Henderson District requested the Commission find that this unlikely event of noncompliance does not create evidence of indebtedness and that the agreement is a grant, which does not require Commission approval under KRS 278.300.²³

Finally, Henderson District requested a declaratory order that Henderson District does not need to amend its QIIP filed in Case No. 2023-00333.²⁴ Henderson District explained that the QIIP acknowledged additional funding would be necessary to carry out the projects outlined in the QIIP.²⁵ Henderson District stated that the grant agreement incorporates by reference a Corrective Action Plan that references and is consistent with its QIIP²⁶. Henderson District explained that the Corrective Action Plan will allow Henderson District to more efficiently carry out the project goals outlined in the QIIP; therefore, the Corrective Action Plan does not change the QIIP but rather allows for additional funding already contemplated by the QIIP.²⁷ Henderson District explained that where the QIIP and the Corrective Action Plan differ are in their timelines and funding as the QIIP initially contemplated that the long-term goals in the action plan would be completed over the course of 60 months.²⁸ Henderson District stated that it does not

²² Application at 7.

²³ Application at 5.

²⁴ Application at 7.

²⁵ Application at 7.

²⁶ Application at 7.

²⁷ Application at 7.

²⁸ Application at 5.

want to start a project without Commission approval and, if the Commission ultimately orders Henderson District to update its QIIP to be able to use surcharge funds for meters, Henderson District will do so and understands any use of surcharge funds must be accompanied by a motion requesting Commission authorization.²⁹

FINANCING OF PROPOSED PROJECT

Henderson District stated that the estimated cost of the proposed AMI project is \$3,000,000 with remaining administrative and planning costs to be covered by future collections of the water loss surcharge funds.³⁰ Henderson District stated that since the proposed project will be funded by the grant agreement with Henderson County Fiscal Court, it will not create indebtedness.³¹ Henderson District explained that surcharge funds will not cover the meter replacement cost and is using the grant funding before using any surcharge funds; therefore, it does not have a payment schedule for the surcharge funds.³² Henderson District provided that the estimated additional cost of operation each AMI meter is approximately \$10.65 per year for a total of \$40,000 per year in operation and maintenance expenses.³³

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

²⁹ Henderson District’s Response to Staff’s First Request, Item 11.

³⁰ Application, Exhibit 2 at 34-36.

³¹ Application, Exhibit 2 at 42.

³² Henderson District’s Response to Staff’ First Request, Item 10(c)

³³ Henderson District’s Response to Staff’s First Request, Item 8(b).

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.³⁴

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 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

³⁴ KRS 278.020(1)(a)(3).

capital outlay to materially affect the existing financial condition of the utility involved or to require an increase in utility rates.”³⁵ “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.”³⁶ 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.³⁷

DISCUSSION

Having reviewed the evidence, the Commission finds that the proposed AMI project will not result in wasteful duplication and does not involve a sufficient capital outlay to materially affect the existing financial condition of Henderson District or require an increase in rates. Specifically, Henderson District explained that it will finance the project through grant funding and that the remaining administrative/planning costs for the project will be covered by future collections of the water loss surcharge funds without any loans or need to increase rates due to the proposed project.³⁸ Because Henderson District’s proposed project is funded through a grant it secured from the city of Henderson, in an amount equal to the project’s estimated costs, it is reasonable to conclude that Henderson District will not need to issue any securities or evidences of indebtedness to fund its

³⁵ 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.

³⁶ *Kentucky Utilities Co. v. Pub. Service Comm’n*, 252 S.W.2d at 890.

³⁷ 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).

³⁸ Application, Project Costs Table, at 36.

proposed project and that it will not need to use material retained capital. Further, Henderson District is proposing to implement the proposed project pursuant to a Corrective Action Plan it developed, consistent with its QIIP, to address unaccounted-for water loss. Among other things, Henderson District indicated that the proposed project will allow it to more efficiently detect and repair leaks and monitor usage in those zones with AMI meters, and that the project will allow it to recover lost revenue by increasing billed consumption and limit estimation errors.³⁹

Therefore, the Commission finds a CPCN should not be required for the proposed project as Henderson District's proposed project satisfies the requirements outlined in KRS 278.020(1)(a)(3) and 807 KAR 5:001, Section 15(3), to qualify for an exception from a CPCN.

With respect to the Grant Agreement, the Commission notes that the Grant Agreement provides funds that are intended to be sufficient to complete the proposed project and only requires repayment of the amounts in the event that Henderson District does not complete the proposed project for which the funds are intended. The Grant Agreement does not have the characteristics of a note or other evidence of indebtedness. Thus, the Commission finds that Commission approval was not necessary prior to Henderson District entering into the Grant Agreement to support the water loss reduction plan identified in its QIIP. However, if the grant funding does not materialize, this Order should not be construed as approval of any indebtedness for the proposed project.

³⁹ Julian Direct Testimony at 39.

Finally, Henderson District requested a declaratory order that Henderson District does not need to amend its QIIP filed in Case No. 2023-00333.⁴⁰ In support of this request Henderson District argued that it had acknowledged in its QIIP that additional funding beyond surcharge funds would be necessary to complete the QIIP projects and the Corrective Action Plan was consistent with the QIIP.⁴¹ After review of the request, the Commission finds that Henderson District request for a Declaratory Order that it does not need to file an updated QIIP should be denied as such a request is better addressed in the surcharge case, which is still ongoing. On or before May 1, 2026, Henderson District should review its QIIP in light of the projects proposed herein and file, in Case No. 2023-00333, either an updated QIIP or a detailed explanation of why an updated QIIP is not necessary in light of the projects proposed in this case. Additionally, nothing in this Order should be considered as authorization to expend surcharge funds, and Henderson District should file all appropriate motions and requests in Case No. 2023-00333 before the use of surcharge funds.

IT IS THEREFORE ORDERED that:

1. Henderson District's request for a declaratory order is granted, in part, and denied, in part.
2. The proposed project is an ordinary extension in the usual course of business, and therefore, a CPCN, pursuant to KRS 278.020(1), is not required.
3. Henderson District was not required to obtain prior Commission approval before entering into the Grant Agreement.

⁴⁰ Application at 7.

⁴¹ Application at 7.

4. On or before May 1, 2026, Henderson District shall review its QIIP in light of the projects proposed herein and file, in Case No. 2023-00333, either an updated QIIP or a detailed explanation of why an updated QIIP is not necessary in light of the projects proposed in this case.

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

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PUBLIC SERVICE COMMISSION



Chairman



Commissioner



Commissioner

ATTEST:



Executive Director



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