

PUBLIC SERVICE COMMISSION OF WISCONSIN

Application of Lena Municipal Water and Sewer Utility, Oconto
County, Wisconsin, to Construct a Radium Removal Treatment System

3120-CW-101

CERTIFICATE OF AUTHORITY AND ORDER

Introduction

On December 31, 2013, the Commission received an application from the Lena Municipal Water and Sewer Utility (Lena), as a public water utility, pursuant to Wis. Stat. § 196.49 and Wis. Admin. Code ch. PSC 184. ([PSC REF#: 194979.](#)) Lena seeks authority to construct a radium removal treatment system, in the Village of Lena, at an estimated total cost of \$3,742,250. The Commission issued a Notice of Investigation on January 30, 2014 ([PSC REF#: 197859](#)), and an Extension of Time Pursuant to Wis. Stat § 196.49(5r)(b) on April 11, 2014. ([PSC REF#: 201808.](#)) No hearing was held. The Commission considered this matter at its open meeting on April 23, 2014.

The application is GRANTED subject to conditions.

Findings of Fact

1. Lena is a public utility as defined under Wis. Stat. § 196.01(5)(a) and provides water service to approximately 249 customers in Oconto County, Wisconsin.
2. This project consists of constructing a radium removal treatment system, at an estimated total cost of \$3,742,250.
3. The type of project and the estimated cost of this project require Commission review and approval under Wis. Admin. Code ch. PSC 184.

4. Lena reported water operating revenues of \$144,970 in 2013.
5. The proposed project is necessary to provide adequate and reliable service for present and future customers.
6. Completion of this project will not substantially impair the efficiency of the service provided by Lena.
7. Completion of this project will not provide facilities unreasonably in excess of Lena's probable future requirements.
8. When this project is placed in operation, the cost of service associated with the project will be proportionate to the increase in value or available quantity of Lena's service.
9. No significant environmental consequences are associated with the project.
10. No significant risk of flooding is associated with this project.
11. The general public interest and public convenience and necessity require completion of the project.

Conclusions of Law

1. The Commission has authority under Wis. Stat. §§ 1.11, 44.40, 196.02, 196.025, 196.395, and 196.49, and Wis. Admin. Code chs. PSC 4 and 184, to issue a certificate and order authorizing Lena to construct the proposed facilities at an estimated total cost of \$3,742,250.

Discussion

Lena Municipal Water and Sewer Utility provides water service to its customers in the Village of Lena, in Oconto County, Wisconsin. Lena's existing water system consists of two wells (one well is currently offline), an elevated storage tank, and 4.7 miles of water main. Lena reported water operating revenues of \$144,970 in 2013. Lena serves about 248 relatively small

water customers and one very large water customer, Saputo Cheese USA, Inc. (Saputo). The Saputo plant located in the Village of Lena represents about 90 percent of Lena's annual water usage, and about 67 percent of its annual sales revenue. In 2013, Saputo used 101,000,000 gallons of water, while the rest of Lena's customers used only 12,000,000 gallons, combined.

In 2013, the radium level in Lena's Well No. 1 exceeded the maximum contaminant level set by the U.S. Environmental Protection Agency. At that time the well was taken out of regular operation and placed into standby and emergency use status. Lena's only other well, Well No. 2, is experiencing rising levels of radium, but is still compliant and in use. In June of that same year, the Village of Lena entered into a consent order with the Wisconsin Department of Natural Resources (WDNR) that requires the construction of a radium treatment system no later than July 2015.

The total estimated cost of this project is \$3,742,250. Lena plans to fund this project with a Safe Drinking Water Loan from the WDNR. Lena also obtained a \$500,000 Community Development Block Grant, and expects to receive \$500,000 in principal forgiveness from the WDNR. As a result, the remaining loan amount will be approximately \$2,742,250.

The estimated rate impact of this project for an average residential customer using 11,000 gallons per quarter would be an increase from \$59.78 to \$129.52. This is approximately a 117 percent increase, and it includes the portion of public fire protection that is direct charged to customers. The estimated rate impact of this project for Saputo, using 25,250,000 gallons per quarter, would be an increase from \$21,151 to \$70,053. This is approximately a 231 percent increase, and it includes the direct public fire protection charge. While Lena's existing water rates are some of the least expensive in the state, the proposed rates will be above average for

utilities serving similar-sized populations. This estimated rate impact is provided for general information. The actual amount of any rate increase would be determined at the time that Lena submits an application for a rate increase. The amount of any increase would depend on several factors, including but not limited to, project financing, growth in customer demand, inflation, actual project costs, and the requested rate of return.

After receipt of the application and prior to Commission deliberation regarding this matter, Commission staff requested that Lena provide information regarding potential alternatives to installing the radium treatment equipment and what the difference in price of the radium project would be if Saputo were not a customer. Lena provided its preliminary analysis that obtaining water from another community did not appear to be a financially viable alternative because the closest utility is in Oconto Falls, about 9 miles away. Using an estimate of \$500,000 per mile, Lena provided a rough, preliminary estimate that the supply main could cost at least \$4,500,000 and that there would likely be costs for a possible booster station and land acquisition. With regard to the type of equipment that might be required to address the radium issue if Saputo were not a customer, Lena responded that the same technology would likely be used, but that several vertical vessels could be built instead of a large horizontal vessel that might reduce the costs. A preliminary cost estimate for such a project, according to Lena, would be approximately \$2 million instead of \$3.7 million currently estimated for the project.

Commission staff also requested that Lena hold a public meeting to notify its customers about the estimated rate impact of this project. The public meeting was held on April 21, 2014, in the Lena Village Hall. The meeting was attended by the Village Board and two residents.

Those two residents expressed concern over the proposed water rate increase. Following the meeting, Lena submitted the full minutes from the public meeting.

This is a Type III action under Wis. Admin. Code § PSC 4.10(3). No unusual circumstances suggesting the likelihood of significant environmental effects on the human environment have come to the Commission's attention. Neither an environmental impact statement under Wis. Stat. § 1.11 nor an environmental assessment is required.

While the proposed construction is needed to provide a water supply that meets minimum standards for quality, the Commission is concerned that the Village of Lena is bearing a disproportionate share of the financial risk for the project without a guarantee that its largest customer would stay on the water system. Under such uncertainty, the proposed construction could be viewed as in excess of probable future water requirements.¹ Wis. Stat. § 196.49(3)(b)2. "Probable" means something "that may be expected to happen or to prove true." The Concise Oxford Dictionary 1090 (9th ed. 1995). In determining whether a project is in excess of probable future requirements, the Commission starts with the facts of record. It is *possible* that Saputo could one day close its plant. However, the current record does not demonstrate that it is *probable* that Saputo would close its plant. Thus, the Commission finds that completion of the radium treatment system will not provide facilities unreasonably in excess of Lena's probable future requirements.

If the radium treatment system were constructed and then Saputo were to close down its plant, the remaining average water customers in Lena would be obligated to pay \$129 per month (an increase of 545 percent over existing rates). Commission staff tried to address this issue

¹ The Commission may approve a project even if the facility is unreasonably in excess of the probable future water requirements. See Wis. Stat. § 196.49(3)(b)2.

during a meeting with the Village of Lena, its consultants, and Saputo on March 3, 2014.

Commission staff stated at the meeting that the radium treatment plant represented a large fixed cost, and that Saputo needed to help share the risk by signing a water use agreement that guaranteed that it would either contribute money up front for the project or continue to buy large amounts of water over the life of the loan. To date, Saputo has not signed any such water use agreement. Unfortunately, due to the fact that Saputo is an existing water customer, the Commission does not have the authority to compel it to negotiate in good faith with the Village of Lena. However, the Commission directs staff to continue to work with the Village of Lena and Saputo in an effort to try and broker a mutually acceptable agreement between the parties.

Having weighed the financial risk to Lena, having considered the pressing need to build a radium treatment plant to serve the community, and considering the apparent absence of any financially viable alternatives to the project based upon Lena's preliminary analysis, the Commission believes that the completion of this project at the estimated cost will not impair the efficiency of Lena's service and, when placed in operation, will not disproportionately add to the cost of service. Commissioner Callisto dissents.

Certificate

Lena Municipal Water and Sewer Utility, as a public utility, is authorized to construct the facilities proposed in its application of December 31, 2013. The total cost of these improvements is estimated to be \$3,742,250.

Order

1. Lena's application for authority to construct facilities in Oconto County, Wisconsin, at an estimated total cost of \$3,742,250 is granted.

2. Lena is encouraged to continue to negotiate with Saputo to arrive at a mutually beneficial water use agreement. Saputo should guarantee that it will either contribute money up front or continue to pay for its current water usage for the life of the radium treatment plant loan.

3. Lena shall acquire any other necessary permits and approvals required from other governmental entities before proceeding with construction.

4. Lena shall promptly notify the Commission if the location of the proposed project changes or if the actual cost of the project exceeds \$3,742,250 by more than ten percent and provide a reason for the change.

5. Unless the Commission grants an extension, Lena must commence construction within two years of the effective date of this Certificate of Authority and Order.

6. This Certificate of Authority and Order takes effect one day after the date of service.

7. Jurisdiction is retained.

Dissent

Commissioner Callisto dissent and writes separately (see attached).

Dated at Madison, Wisconsin, this 30th day of April, 2014.

For the Commission:



Sandra J. Paske
Secretary to the Commission

SJP:SPK:bjs:DL:00922384

See attached Notice of Rights

PUBLIC SERVICE COMMISSION OF WISCONSIN
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**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE
TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE
PARTY TO BE NAMED AS RESPONDENT**

The following notice is served on you as part of the Commission's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

PETITION FOR REHEARING

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Commission for rehearing within 20 days of the date of service of this decision, as provided in Wis. Stat. § 227.49. The date of service is shown on the first page. If there is no date on the first page, the date of service is shown immediately above the signature line. The petition for rehearing must be filed with the Public Service Commission of Wisconsin and served on the parties. An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

PETITION FOR JUDICIAL REVIEW

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. In a contested case, the petition must be filed in circuit court and served upon the Public Service Commission of Wisconsin within 30 days of the date of service of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of the date of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Commission serves its original decision.² The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: March 27, 2013

² See *State v. Currier*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.

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DISSENT OF COMMISSIONER ERIC CALLISTO

I dissent from the Certificate of Authority and Order because the Lena Municipal Water and Sewer Utility (Lena) failed to provide for the Commission an alternatives analysis, as is required under Wis. Admin. Code § PSC 184.04(3)(c). An alternatives analysis is important here because of the extent of the financial exposure that this project presents for Lena's ratepayers. As a result of the Certificate of Authority and Order, Lena's residential customers will see a 117 percent rate increase, while Saputo Cheese USA, Inc. (Saputo), will have a 231 percent rate increase. And a 545 percent rate increase awaits Lena's residential customers if Saputo leaves town or stops taking service from Lena, an eventuality that is distinctly possible at this point, in light of Saputo's current non-committal on taking water from Lena going forward. Because of what's at stake here, I would have preferred that we follow through with the required alternatives analysis under Wis. Admin. Code § PSC 184.04(3)(c). I also would have supported more aggressive Commission staff involvement aimed at firming up Saputo's commitment to this community before approving this project.

I respectfully dissent.

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