

**SERVICE DATE**  
**Feb 11, 2021**

PSC REF#: 404607

Public Service Commission of Wisconsin  
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**PUBLIC SERVICE COMMISSION OF WISCONSIN**

Application of the Village of Fox Crossing, as a Water Public Utility,  
for Authority to Construct a Booster Station and Water Transmission  
Main to Expand its Water Service Area, in the Town of Clayton and the  
Village of Fox Crossing, Winnebago County, Wisconsin

3550-CW-104

**RECEIVED**

**March 1, 2021**

Municipal Boundary Review  
Wisconsin Dept. of Admin.

**FINAL DECISION**

**Introduction**

On July 30, 2020, the Commission received an application from the Village of Fox Crossing, as a water public utility (applicant), pursuant to Wis. Stat. § 196.49 and Wis. Admin. Code ch. PSC 184. The applicant seeks authority to construct a booster station and water transmission main to expand its water service area into the Town of Clayton (Clayton) at an estimated total cost of \$2,552,588. The Commission issued a Notice of Investigation on January 7, 2021. On January 12, 2021, Clayton and the Town of Clayton Sanitary District No. 1 filed a timely Request to Intervene in this proceeding in support of the application. ([PSC REF#: 402807](#).) On February 2, 2021, Administrative Law Judge Michael E. Newmark granted the unopposed Request to Intervene. ([PSC REF#: 404090](#).) No hearing was required nor held. No major concerns were brought to the attention of Commission staff.

The application is GRANTED, subject to conditions.

**Findings of Fact**

1. The applicant is a public utility as defined under Wis. Stat. § 196.01(5)(a) and provides water service to approximately 8,980 customers in Winnebago, Outagamie, and Calumet Counties.

2. The proposed project consists of constructing a booster station and water transmission main and extending the applicant's water service area to include a portion of the Clayton at an estimated total cost of \$2,552,588.

3. The type of project and the estimated cost of this project require Commission review and approval under Wis. Stat. § 196.49 and Wis. Admin Code ch. PSC 184.

4. No person requested a hearing in this investigation.

5. The applicant reported water operating revenues of \$5,031,615 in 2019.

6. Based on the applicant's PSC Annual Report, between 2015 and 2019 water sales declined by 6.79 percent, and average gallons per residential customer declined by 7.03 percent.

7. The proposed project is necessary to provide adequate and reliable service for present and future customers.

8. Completion of this project will not substantially impair the efficiency of the service provided by the applicant.

9. Completion of this project will not provide facilities unreasonably in excess of the applicant's probable future requirements.

10. When this project is completed, the additional cost-of-service of this project will be proportionate to the increase in value or available quantity of service.

11. No significant environmental consequences are associated with the project.

12. No significant risk of flooding is associated with this project.

13. The construction of the proposed project will not affect any historic properties.

14. The construction of the proposed project will not affect any endangered or threatened species.

15. Authorization of the project is in the public interest.

### **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 Final Decision and Certificate authorizing the applicant to construct the proposed facilities at an estimated total cost of \$2,552,588.
2. The Commission has authority under Wis. Stat. § 15.02(4) to delegate to the Administrator of the Division of Water Utility Regulation and Analysis, those functions vested by law as enumerated above. It has delegated the authority to the Administrator of the Division of Water Utility Regulation and Analysis to issue a Final Decision and Certificate for the proposed project.
3. The estimated gross cost of this project exceeds the minimum threshold of applicant projects requiring Commission review and approval under Wis. Stat. § 196.49 and Wis. Admin. Code ch. 184.
4. The Commission may impose any term, condition or requirement necessary to protect the public interest pursuant to Wis. Stat. §§ 196.02, 196.395, and 196.49.
5. The application is a Type III action under Wis. Admin. Code § PSC 4.10(3) and requires neither an environmental impact statement (EIS) nor an environmental assessment (EA).

### **Opinion**

#### **Project Description and Purpose**

The applicant provides water service to its customers in the Village of Fox Crossing, the City of Appleton, the City of Menasha, the City of Neenah, and the Town of Neenah in

Winnebago County; the Town of Harrison and the Village of Harrison in Calumet County; and the Town of Grand Chute in Outagamie County. The applicant's existing water system consists of six wells, six concrete ground reservoirs and elevated storage tanks, and 135 miles of water main. The applicant proposes construction of a new booster station, a 1,250 gallon hydropneumatic tank, and 2.7 miles of 6-inch, 8-inch, 12-inch, and 16-inch water main, all within Clayton and outside the applicant's existing service area, at a cost of \$2,552,588. The proposed booster pumping station includes four 500 gpm pumps and an emergency generator and will be located on the west side of the intersection of West American Drive and Clayton Avenue. The proposed transmission mains consist of two branches, both of which start at the booster pumping station and run west to STH 76. The first branch follows West American Drive and the second branch follows Friendship Trail. Clayton will construct the project and dedicate it to the applicant.

### **Project Need**

The applicant contends the project is needed to provide retail water service to existing and future residents and businesses in a portion of Clayton along an urban corridor that includes USH 10, STH 76, and Clayton Avenue. Clayton does not currently have a municipal water system. The proposed booster station and transmission mains will convey water to existing businesses and anticipated growth in this limited area. The application estimates that within five years, the water system will serve approximately 166 customers in Clayton with a maximum day demand of 143 gpm. The booster station and transmission mains are sized to convey a fire flow of 1,500 gpm that is needed to serve this urban corridor. The applicant presently has sufficient excess capacity to meet the projected maximum day demand and fire demand in this portion of

Clayton. As the corridor develops and expands in the future, the applicant will need to construct additional water infrastructure.

### **Alternatives**

Prior to its agreement with the applicant, Clayton considered several alternatives for supplying water to its residents. The first alternative entailed Clayton creating its own water utility to supply water to its service area. This option would include construction of three wells, two water storage tanks totaling 1.5 million gallons, and a distribution system. Clayton estimated the cost of this alternative was \$20.7 million.

The second alternative entailed the Appleton Water Department (Appleton) providing retail water service to Clayton. Appleton would extend a transmission main through the Town of Grand Chute and the Village of Fox Crossing to Clayton. This option included construction of a 300,000 gallon reservoir, one booster station, and approximately five miles of transmission main. Clayton estimated the cost of this alternative was \$14.1 million.

Based on Clayton's review of the other alternatives, the applicant considered and chose the third alternative which entailed the Village of Fox Crossing providing retail water service to a portion of Clayton along the USH 10, STH 76, and Clayton Avenue corridor. This alternative entailed construction of a booster station with four 500gpm pumps, a 1,250 gpm hydropneumatic tank, and 2.7 miles of 6-inch, 8-inch, 12-inch, and 16-inch water main. The Village of Fox Crossing would also provide wastewater service to Clayton. Clayton would pay for the estimated \$2,552,588 in drinking water improvements as part of an inter-municipal agreement between the Village of Fox Crossing and the Town of Clayton that would settle a boundary dispute between the two jurisdictions. ([PSC REF#: 398527.](#)) The applicant recognizes that

Clayton could take ownership of the water system at some future time when it has a larger customer base. A transfer of ownership would require Commission approval. In summary, the chosen alternative is the least expensive option, utilizes excess water capacity in the Village of Fox Crossing, and provides Clayton with the flexibility to become a water utility when its water service area grows.

### **Environmental Review**

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.

### **Project Cost, Construction Schedule, Rate Impact**

The total estimated cost of this project is \$2,552,588. Clayton plans to fund the project with funds from Tax Incremental Financing (TIF) and general obligation debt. Upon completion of the project, Clayton would contribute the new water plant to the applicant. The applicant will provide retail service to new customers in Clayton. The applicant plans to begin construction in the spring of 2021 and complete it in the fall of 2021. Commission staff estimates that implementation of this project would result in the need to increase the applicant's rates by 1.61 percent. This estimated rate impact is provided for general information. The actual amount of any rate increase would be determined at the time the applicant 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.

## **Conclusion**

The project, as conditioned herein, complies with Wis. Stat. § 196.49(3)(b). The project will not substantially impair the efficiency of the applicant's service. At present, the applicant has excess capacity that can meet the needs of the proposed service area expansion into Clayton. The design for the new booster station includes high efficiency pumps with variable frequency drives, which would save energy.

Completion of this project will not provide facilities unreasonably in excess of the applicant's probable future requirements. The proposed booster station, hydropneumatic tank, and transmission mains are sized to meet the anticipated first phase of growth in Clayton. The fire demand rather than maximum or average day demand controls the design capacity of the project.

When placed in service, the project will increase the value of available quantity of service in proportion to any addition to the applicant's cost of service. The proposed project is the most cost effective alternative for providing water to Clayton at this stage in the Town of Clayton's development. The parallel 16-inch transmission mains provide the infrastructure needed to meet growth along the USH 10 corridor between STH 76 and Clayton Avenue. The project also provides the applicant with additional revenues from new retail water customers located in Clayton.

## **Certificate**

The Village of Fox Crossing, as a water public utility, is authorized to construct the facilities proposed in its July 30, 2020, application, at a total cost of \$2,552,588, subject to the conditions in this Final Decision.

**Order**

1. The applicant's application for authority to construct facilities in Winnebago County, at an estimated total cost of \$2,552,588, is granted.
2. This authorization is for the specific project as described in the application, at the stated project cost. Should the scope, design, or location of the project change significantly, or if it is discovered or identified that the project cost, including *force majeure* costs, may exceed the estimated cost by more than 10 percent, the applicant shall promptly notify the Commission as soon as it becomes aware of the possible change or cost increase and provide a reason for the change.
3. The applicant shall obtain all necessary federal, state, and local permits prior to commencement of construction.
4. If the applicant does not begin on-site physical construction within two years of the effective date of this Final Decision, the certificate authorizing the project shall become void unless the applicant: a) files a written request for an extension of time with the Commission before the date on which the certificate becomes void; and b) is granted an extension by the Commission.
5. If the applicant has not begun on-site physical construction and has not filed a written request for an extension before the date the certificate becomes void, the applicant shall inform the Commission of those facts in writing within 20 working days after the date on which the certificate becomes void.
6. The applicant shall submit to the Commission the final actual costs segregated by the Commission's uniform system of accounts within one year after the in-service date. For

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those accounts where actual costs deviate significantly from those authorized, the final cost report shall itemize and explain the reasons for any such deviations.

7. This Final Decision takes effect one day after the date of service.

8. Jurisdiction is retained.

Dated at Madison, Wisconsin, February 11, 2021.

For the Commission:

A handwritten signature in black ink, appearing to read "Denise L. Schmidt". The signature is fluid and cursive, with the first name "Denise" being more prominent.

Denise L. Schmidt  
Administrator  
Division of Water Utility Regulation and Analysis

DLS:spk:ggl DL:01776834

See attached Notice of Rights

PUBLIC SERVICE COMMISSION OF WISCONSIN  
4822 Madison Yards Way  
P.O. Box 7854  
Madison, Wisconsin 53707-7854

**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.<sup>1</sup> 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

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<sup>1</sup> See *Currier v. Wisconsin Dep't of Revenue*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.