

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY-AMERICAN WATER)
COMPANY FOR A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY AUTHORIZING)
THE CONSTRUCTION OF APPROXIMATELY)
51,900 FEET OF 24" MAIN, 3,250 FEET OF)
12" MAIN, WITH ASSOCIATED VALVES AND)
FITTINGS, KNOWN AS THE "JACK'S CREEK)
PIPELINE")

CASE NO. 90-249

O R D E R

On August 24, 1990, Kentucky-American Water Company ("Kentucky-American") filed an application for a Certificate of Public Convenience and Necessity to construct a \$3,460,000 water-works improvement project. Kentucky-American proposes to finance the construction initially through short-term bank borrowings. After construction is complete, the costs will be converted to permanent financing. The proposed construction, commonly referred to as the "Jack's Creek Pipeline," will provide additional water transmission facilities in the southwestern part of Kentucky-American's service area. The proposed route is through southern Fayette County and northern Jessamine County. Drawings and specifications for the proposed improvements were prepared by the American Water Works Service Company, Inc. of Voorhees, New Jersey, and William H. Pinnie & Associates, of Lexington, Kentucky, and have been approved by the Division of Water of the

Natural Resources and Environmental Protection Cabinet ("Division of Water").

On November 27, 1990, Kentucky-American amended its application to reroute its proposed transmission line further north in Jessamine County nearer the Jessamine/Fayette County line. This modified route would require 2,900 lineal feet less transmission main and reduce the proposed total project cost to \$3,222,000. The revised project has also been approved by the Division of Water.

A hearing was held on January 10, 1991 at the Commission's offices in Frankfort, Kentucky. Spears Water Company ("Spears Water"), Lexington-South Elkhorn Water District ("Lexington-South Elkhorn Water"), Jessamine County Water District No. 1 ("Jessamine Water"), Daryoush Marefat and the Ash Grove Road Neighborhood Association intervened in this matter. All intervenors except Jessamine County Water District No. 1 participated in the hearing.

DISCUSSION

Kentucky-American's original application proposed a 24-inch water transmission line to run from an existing 30-inch high service line in Fayette County near Jack's Creek Road, westerly through Fayette County along Shelby Lane and Delong Road, into Jessamine County along Ash Grove Road to U.S. 27 (Nicholasville Road), and then in a northerly direction along U.S. 27 to connect into Kentucky-American's existing water system. However, after encountering difficulty in obtaining easements along Ash Grove Road, as well as receiving what Kentucky-American considered exorbitantly costly awards during the condemnation process, the

route was modified. Kentucky-American amended its application to reflect the modified route, which was the same in the southwestern portion of Fayette County but was moved north of and roughly parallel to Ash Grove Road nearer the Fayette/Jessamine County line in northern Jessamine County.

The original route, as well as the modified route, of the proposed transmission facilities is located either parallel to or in the general vicinity of existing water distribution facilities of Spears Water and Jessamine Water. Kentucky-American's exhibits also indicate that it intends to propose additional facilities in the future which will be in the general vicinity of existing water distribution facilities of Lexington-South Elkhorn Water. While Spears Water, as a private, investor-owned water utility, has no territorial boundary, Jessamine Water and Lexington-South Elkhorn Water do have territorial boundaries established by the county judge/executive pursuant to KRS Chapter 74.

The proposed construction is classified as transmission facilities and was designed for the purpose of moving large quantities of treated water from Kentucky-American's source of supply to where it is needed for distribution. Kentucky-American also stated that the proposed construction is necessary to reinforce its water system. The proposed transmission facilities will allow the system to operate at higher and more stable pressures during peak demands and will allow more effective utilization of system storage. None of the intervenors challenged Kentucky-American's need for additional transmission facilities to transport treated water for distribution in southwestern Fayette

County. However, they did take strong exception to the transmission facilities being sited in Jessamine County.

The intervenors noted that in Case No. 9696¹ Kentucky-American filed its 1986 Least Cost/Comprehensive Planning Study ("Study") which delineated all major construction projects for the 1986-2000 time frame. The Jack's Creek Pipeline was identified in the Study as being located wholly within Fayette County and needed to supply both "A rapidly developing region of Fayette County [that] is along the southern county line,"² and "customers on the western side of Lexington."³ Unlike Kentucky-American's current exhibits, its 1986 Study shows no facilities being proposed within Jessamine County.

Spears Water and Lexington-South Elkhorn Water argued that their respective systems had constructed capital intensive water facilities to serve the anticipated growth in retail customers and that Kentucky-American should not be permitted to compete for retail customers in Jessamine County. Kentucky-American initially denied any intent to provide retail service to either existing customers of another water utility or to new customers who could be served by another water utility. But this philosophy was

1 Case No. 9696, An Analysis of the "Least Cost Planning Evaluation" Submitted by Kentucky-American Water Company.

2 Kentucky-American Water Company 1986 Least Cost/Comprehensive Planning Study, p. 69.

3 Id.

quickly clarified, and significantly modified, to the extent that Kentucky-American would serve customers of another water utility, or new customers, if Kentucky-American could provide a better quality of service.

Spears Water and Lexington-South Elkhorn Water argued that Kentucky-American's philosophy to willingly serve existing or potential customers of other water utilities would result in the wasteful duplication of facilities and that as a consequence, Kentucky-American is not entitled to a certificate pursuant to KRS 278.020(1). The Commission recognizes that Kentucky-American's ability and willingness to serve retail customers in Jessamine County could lead to the future construction of distribution facilities that duplicate existing facilities. While the evidence demonstrates that the proposed transmission facilities will not be duplicative of any existing water facilities, the potential for such duplication is real.

Spears Water and Lexington-South Elkhorn Water also argued that the shortest, most direct, and least costly route for the proposed transmission facilities is the route identified in the 1986 Study. The engineering information provided by Spears Water and Lexington-South Elkhorn Water indicated that this alternate route, totally within Fayette County, would be approximately 7,400 lineal feet less in length than Kentucky-American's modified route and was estimated to cost approximately \$2.93 million.

Kentucky-American did not refute the evidence that a Fayette County route was shorter and less expensive. The Commission may not issue a Certificate of Public Convenience and Necessity unless

the evidence demonstrates that there is both a need for the proposed transmission line to meet customers' service demands and an absence of wasteful duplication. For the Commission to find the requisite absence of wasteful duplication, it must review duplication "from the standpoints of excessive investment in relation to efficiency, and an unnecessary multiplicity of physical properties." Kentucky Utilities Co. v. Public Service Comm'n, (Ky. App.) 252 S.W.2d 885, 891 (1952). In light of this standard, it is clear that the longer, more expensive route in Jessamine County will not produce the requisite absence of wasteful duplication. The additional 7,400 lineal feet of transmission main needed for Kentucky-American's proposed Jessamine County route will, based on the evidence of record, result in an excessive investment in terms of both dollars and lineal feet of pipe. Based on these findings, Kentucky-American's request for authority to construct the Jack's Creek Pipeline as proposed in its amended application should be denied.

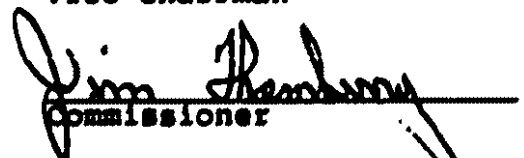
IT IS THEREFORE ORDERED that Kentucky-American's application for a Certificate of Public Convenience and Necessity be and it hereby is denied.

Done at Frankfort, Kentucky, this 27th day of March, 1991.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director