

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)	CASE NO. 91-359
49,000 FEET OF 24" MAIN, 400 FEET OF)	
12" MAIN, 240 FEET OF 8" MAIN, WITH)	
ASSOCIATED VALVES AND FITTINGS, KNOWN)	
AS THE "JACK'S CREEK PIPELINE")	

O R D E R

On September 30, 1991, Kentucky-American Water Company ("Kentucky-American") filed an application for a Certificate of Public Convenience and Necessity to construct a \$3,237,000 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. Finnie & Associates, of Lexington, Kentucky, and have been approved by the Division of Water of the Natural Resources and Environmental Protection Cabinet.

A hearing was held on April 1, 1992 at the Commission's offices in Frankfort, Kentucky. Spears Water Company ("Spears"), Lexington-South Elkhorn Water District ("Lexington-South Elkhorn"), Jessamine County Water District No. 1 ("Jessamine No. 1"), and the city of Nicholasville ("Nicholasville") intervened and participated in this matter. These parties are collectively referred to as the "Intervenors."

DISCUSSION

Kentucky-American has proposed to construct a 24-inch water transmission line to run from an existing 30-inch high service line in Fayette County near Jacks Creek Road, westerly through Fayette County along Shelby Lane and DeLong Road, into Jessamine County roughly parallel to the Fayette/Jessamine County line, and then in a northerly direction connecting to Kentucky-American's existing water system at U.S. 27 in Fayette County. This route is referred to by Kentucky-American in its application as Route A.

Kentucky-American's application also included detailed information on four alternative pipeline routes, designated Routes B through E, for the Commission's consideration. Kentucky-American bid eight separate pipeline sections which, in various combinations, would allow the five different routes discussed in its application for the Jack's Creek Pipeline. Routes B through E are located totally in Fayette County. Route A, which is located in both Fayette and Jessamine counties, was selected and recommended by Kentucky-American as the most feasible and least expensive to construct as well as minimizing conflicts and disturbances to property owners and the general public.

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, will allow more effective utilization of system storage, and lower head losses in the areas to be served by the proposed facilities.

None of the Intervenor's challenged Kentucky-American's need for increased water quantities and pressures in South West Fayette County. However, the Intervenor's did suggest two alternative transmission lines that were represented as being sufficient to satisfy Kentucky-American's needs. These two alternatives were challenged by Kentucky-American as producing an inefficient underutilization of the treatment capacity at its Kentucky River Station and a physically impossible overutilization of capacity at its Richmond Road Station.

The Intervenor's specifically opposed Route A due to their concerns that the existence of a water transmission line within Jessamine County would enable Kentucky-American to compete for existing and new retail water customers. Evidence was presented by the Intervenor's to support their position that retail competition would have an adverse financial impact on their respective operations due to their significant capital investment in water facilities. In response to a federal lawsuit filed by

Lexington-South Elkhorn and Jessamine No. 1, Kentucky-American stated in this case that it would not serve any customers at retail within the established boundaries of Lexington-South Elkhorn or Jessamine No. 1 as long as they had outstanding Farmers Home Administration financings. Kentucky-American did offer to sell water or fire protection service to Lexington-South Elkhorn or Jessamine No. 1 for their resale to retail customers.

Kentucky-American further maintained that since Spears did not have a defined service territory, retail competition for Spears' customers should not be discouraged. Spears stated that it currently has an outstanding five year bank note that was personally co-signed by its shareholders, the repayment of which will be in jeopardy if customers are lost to Kentucky-American. Nonetheless, pursuant to KRS Chapter 278, Spears nor Kentucky-American have defined service territories and the Commission is without any statutory authority to in effect create such defined service territories.

The Commission, having reviewed the evidence of record and being otherwise sufficiently advised, finds that:

1. Public convenience and necessity require the construction of Route A as proposed in the application. Route A is the most feasible and least costly alternative available for Kentucky-American to satisfy the demands of its customers.

2. The two alternative construction projects suggested by the Intervenor will not adequately meet the needs of Kentucky-American's customers in an efficient, cost effective manner.

3. Construction of Route A will consist of the installation of approximately 9.4 miles of 24-, 12-, and 8-inch diameter pipeline and related appurtenances. Based on the low bids submitted and after allowances are made for fees, contingencies, and other indirect costs, the total project is estimated to cost \$3,237,000.

4. Kentucky-American should obtain approval from the Commission prior to performing any additional construction not expressly certificated by this Order.

5. Any deviation from the construction approved should be undertaken only with the prior approval of the Commission.

6. Kentucky-American should furnish duly verified documentation of the total costs of this project, including the cost of construction and all other capitalized costs (engineering, legal, administrative, etc.), within 60 days of the date that construction is substantially completed. Said construction costs should be classified into appropriate plant accounts in accordance with the Uniform System of Accounts for Water Utilities prescribed by the Commission.

7. Kentucky-American should require the provision of full-time resident inspection under the general supervision of a professional engineer with a Kentucky registration in civil or mechanical engineering, to ensure that the construction work is done in accordance with the contract drawings and specifications and in conformance with the best practices of the construction trades involved in the project.

8. Kentucky-American should furnish within 60 days of the date of substantial completion of this construction a copy of the

"as-built" drawings and a signed statement that the construction has been satisfactorily completed in accordance with the contract plans and specifications.


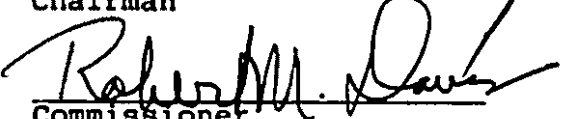
IT IS THEREFORE ORDERED that:

1. Kentucky-American be and it hereby is granted a Certificate of Public Convenience and Necessity to proceed with the proposed construction of Route A of the Jack's Creek Pipeline as set forth in the drawings and specifications of record herein.

2. Kentucky-American shall comply with all matters set out in Findings 4 through 8 as if the same were individually so ordered.

Done at Frankfort, Kentucky, this 17th day of April, 1992.

PUBLIC SERVICE COMMISSION


Chairman

Commissioner

DISSENTING OPINION OF VICE CHAIRMAN THOMAS M. DORMAN

I respectfully dissent from the majority opinion to the extent certain conditions in the public interest should be placed upon Kentucky-American's ability to offer service to any existing customer of Spears. Kentucky-American, in response to a federal lawsuit filed by Lexington-South Elkhorn and Jessamine No. 1, has stated that it would comply with federal law to not serve any

retail customers within the established boundaries of Lexington-South Elkhorn or Jessamine No. 1 as long as these entities had outstanding loans from the Farmers Home Administration. Spears does not enjoy the protection of federal law. While Spears does not have a defined service territory, Spears does currently have an outstanding five year bank note that was personally cosigned by its shareholders, the repayment of which will be jeopardized by the loss of customers to Kentucky-American.¹ The erosion of Spears customer base will precipitate higher rates for the remaining customers not offered service by Kentucky-American because of the need to spread Spears fixed costs over a smaller customer base.

The Commission has a statutory duty when ruling upon certificates of convenience and necessity to protect the public interest. This duty encompasses not only the applicant's customers but any utility's customers which may be impacted by the Commission's ruling. "[I]t is the duty of the Public Service Commission to prevent ruinous competition. . ." City of Cold Spring v. Campbell County Water District, Ky., 334 S.W.2d 269, 272 (1960), overruled on other grounds. In granting the Certificate of Public Convenience and Necessity, the Commission must find that there is both a need for the proposed transmission line to meet

¹ Spears Water Company, Inc.'s Annual Report, year ending December 31, 1991, page 21, Farmers Bank, Mortgage Loan issued 12/91, matures 11/96, principle per balance sheet date, \$270,000.

customers' service demands as well as an absence of wasteful duplication. In considering the question of duplication, it is appropriate to consider possible increased cost to the remaining customers of Spears who might be compelled to pay higher rates as a result of the loss of Spears' customer base. Kentucky Utilities Company v. Public Service Commission, Ky.App., 252 S.W.2d 885, 891 (1952).

Kentucky-American's proposed water transmission line will provide additional water transmission facilities in the southwestern part of Kentucky-American's service area and is necessary. If used strictly for transmission and to provide services not otherwise available in the area, there is an absence of wasteful duplication. However, Kentucky-American has stated that it would serve customers of Spears by using the proposed transmission line in part for distribution. The Certificate of Public Convenience and Necessity should be granted to allow the proposed construction of Route A. However, Kentucky-American should be restricted from providing retail water service to any current customer of Spears until after payment of Spears' existing note which represents Spears capital investment in its water facilities less the amount of that note which was used for payment of the reacquired capital stock in the amount of \$130,680 as indicated in Spears' Annual Report.² Kentucky-American should be

² Id., page 9, Comparative Balance Sheet-Equity Capital and Liabilities, Account No. 216.

allowed to provide fire protection to any customer of Spears, a service Spears cannot now provide, and to provide retail water service to any customer not currently being served by Spears. This time limited restriction upon Kentucky-American's ability to serve Spears' current customers will protect those customers of Spears who will not be offered service by Kentucky-American from unreasonably and unnecessarily high rate increases.



Thomas M. Dorman
Vice Chairman
Kentucky Public Service Commission

ATTEST:

Executive Director