

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION FOR APPROVAL FOR)	
THE CREATION OF THE LETCHER)	
COUNTY WATER AND SEWER)	CASE NO. 96-515
DISTRICT)	

O R D E R

On November 6, 1996, the Public Service Commission received an application for approval for creation of the Letcher County Water and Sewer District. On December 4, 1996, the application was amended by the filing of a petition signed by five freeholders ("Applicants"), and a resolution from the Letcher County Fiscal Court. The freeholder petition sought the Commission's approval for the establishment of a water and sewer district to be known as the Letcher County Water and Sewer District. The application was filed under KRS 74.012, which relates to the formation of a water district. Thus, the issue before the Commission concerns only the formation of a water district. Once established, a water district has the authority pursuant to KRS 74.407 to develop a sewage disposal system within its boundaries.

Following the application, an investigation was made by Commission Staff regarding the engineering and economic feasibility of the proposed district. On March 27, 1997, Commission Staff issued a report of that investigation. Pursuant to Commission Orders and KRS 74.012(1), a public hearing concerning the matter was held before the Commission on April 21, 1997.

FINDINGS OF FACT

Currently, what water service there is in Letcher County is provided by the municipalities of Fleming-Neon, Jenkins, and Whitesburg, primarily within their city limits, but also to residents of the county living in areas adjacent to, and easily served by the municipal systems. There are also a few extremely small private or community systems that provide water of uncertain quality and quantity to a minimal number of households. What sewer service there is in Letcher County is likewise provided by the municipalities of Fleming-Neon, Jenkins, and Whitesburg, with only Fleming-Neon having extended sewer service beyond its city limits. Thus, most of the county's residents outside of these three municipalities are without water or sewer service, and are forced to rely upon wells, mines, and creeks. It is estimated that only 26 percent of all Letcher County residents are on a public water system, while only 11 percent have sewer service.

The proposed district intends to furnish water and sewer service to the areas in the county which are not now served by existing water or sewer suppliers. Its boundaries are to include all of Letcher County, with the exception of the three incorporated municipalities mentioned above. By the time the proposed district achieves all of its goals, the Applicants hope that 81 percent of all Letcher County residents will be on a public water system, with 52 percent having sewer service.

There is little question that a need exists for the proposed water and sewer district. In addition to the low number of Letcher County residents who have access to public water or sewer service, the county itself is in a unique geographical position. The headwaters of three major rivers, the Kentucky, Cumberland, and Big Sandy, are located

in Letcher County. Into these headwaters daily flows at least 100,000 gallons of untreated household wastewater from "straight pipe" discharges.¹ The situation in Letcher County thus affects not only its own residents, but a large section of the Commonwealth. In Letcher County, where over 70 percent of the population relies on well, mine, and creek water, 90 percent of private water samples taken by the local health department have exceeded the acceptable fecal coliform bacteria count. According to an exhibit filed by the Applicants, Letcher County has a high rate of Hepatitis A:

1993 records show the rate of Hepatitis A in Letcher County at 18/100,000 persons, with only 14 per 100,000 for the state of Kentucky and 10/100,000 nationally.²

The Applicants believe that a county-wide water and sewer provider would be the best, if not the only, solution to these problems.

It is the intention of the Applicants that the proposed district be expanded in phases based on priorities which have been identified. Sewer service is to be extended first to areas to which the municipals already supply water but have shown no interest in extending sewer lines. The reason for this lack of interest on the part of the

¹ Letcher County's initial development centered around coal mining camps which were extensive row houses built by the coal companies for their employees. Due to the topography of the county, these houses were clustered in very close proximity in flat areas on small lots adjacent to streams. For sewage disposal, a straight pipe was run from the house to the stream. These pipes are still in use today. There is no room on most lots for a septic tank or other on-site sewage treatment facility.

² Exhibit VII, Documentation and Technical Information, to the application submitted to the Commission November 6, 1996, at page 3.

municipals appears to be that the municipals do not have the staff, resources, or funds to extend such service.³ The proposed district intends to utilize the excess capacity of the municipal wastewater treatment plants located in Whitesburg and Fleming-Neon for its early treatment needs. Testimony was offered that these plants can easily accommodate the initial needs of the proposed district.⁴

Another early goal of the proposed district is to identify and develop a source of raw water supply. A dependable source of supply is an existing problem for the three municipal water systems already operating in Letcher County, particularly in times of drought. The proposed district would be faced with the same obstacle. In order to provide county-wide water service, a new source of supply is necessary. At the hearing, testimony was offered that a county-wide entity, with the cooperation of the municipals, would be the optimum vehicle to develop such a source, as it is a "massive undertaking."⁵ Potential sources of supply which have been identified are the Carr Fork Reservoir in Knott County, existing underground mines in Letcher County, or the construction of a new reservoir in Letcher County. The source, once developed, would be shared in some fashion, whether directly or indirectly, by all water providers in the county, and perhaps even be utilized by other providers in the region.

During the course of this proceeding, it has been stressed by the Applicants that the proposed district has the support and cooperation of the municipalities in Letcher

³ April 21, 1997 Transcript of Evidence ("Transcript") at 86.

⁴ Transcript at 87.

⁵ Transcript at 89.

County. At the hearing, all witnesses who were asked whether the efforts of the proposed district to provide county-wide water and sewer service would have the cooperation of the existing providers of water and sewer service in Letcher County, and whether the duplication of facilities and services would be avoided as much as possible, answered both questions in the affirmative.⁶ From everything which has been filed in the record, this appears to be the case. This cooperation is a key element in the potential success of the proposed district.

In its investigation and report, Commission Staff, while acknowledging that the service area of the proposed district covers approximately 339 square miles, identified the most densely populated areas in the county which are closest to the largest source of treated water. These areas were assumed to be the most likely candidates for treated water service.⁷ Staff determined that water service to these areas would require 23.6 miles of pipeline to extend service to 760 potential customers. Staff concluded that either Whitesburg or the proposed district, assuming it could purchase water from Whitesburg, could feasibly extend service to these areas at a comparable monthly cost per customer. Staff noted that whichever entity served the subject area, a significant amount of grant money would be required to make the project feasible. This is a fact readily acknowledged by the Applicants who hope that the proposed district, once created, can be utilized to more actively and effectively pursue such funding.

⁶ Transcript at 24-25, 43-44, 78-79, and 87-89.

⁷ Staff's study, due to KRS 74.012, focused only on the water aspect of the proposed district.

CONCLUSIONS OF LAW

Before the Commission may approve any application for the creation of a water district, it must make a finding and determination of fact that the geographical area sought to be served by the proposed water district cannot be feasibly served by an existing water supplier. KRS 74.012(3). If the Commission finds that the area proposed to be served can be more feasibly served by an existing water supplier, then the Commission is directed by the statute to deny the application. This procedure serves to discourage the proliferation of water utilities.

The Commission Staff report issued March 27, 1997 concluded that the city of Whitesburg could provide the same service to potential customers of the proposed district residing in the area of the Staff's study at rates comparable to those rates that the proposed district would charge. Assuming that Whitesburg was willing to serve the area included in Staff's study, Staff went on to conclude that Whitesburg could, from an engineering and economic standpoint due to its existing infrastructure and personnel, serve that area more feasibly than the proposed district. The witnesses at the hearing took exception to this conclusion to the extent that the area included in Staff's study was only a small part of what the proposed district intends to serve. While the study area included potential customers in close proximity to Whitesburg, the proposed district intends to provide water and sewer service on a county-wide basis. Furthermore, in response to being questioned regarding whether there was any existing entity in Letcher County which could provide water and sewer service in the area proposed to be served by the Letcher County Water and Sewer District, all witnesses to whom the question was

posed responded in the negative.⁸ Furthermore, neither Whitesburg nor the other two municipal systems have expressed the desire, or appear to have the means, to expand their services further into the county. The municipalities are faced with limitations that the proposed district would not. Where a district could focus strictly on providing water and sewer services to the rural residents of Letcher County, the municipalities have other responsibilities and priorities to which their resources must be dedicated.

Another factor to be considered in determining whether the area proposed to be served by the Letcher County Water and Sewer District could be feasibly served by an existing supplier is more political in nature. It was noted at the hearing that the county residents have been known to resist being served by the municipalities, apparently out of fear of annexation. As a result, the proposed district has been better received in the rural areas of the county. The proposed district does not bring with it the threat of annexation, whether real or imagined, that the municipals do.⁹

While the limited area included in Staff's feasibility study could be feasibly served by the city of Whitesburg, it is clear from the record that this is not a realistic solution. Whitesburg has expressed no interest in serving that area, nor is it capable of serving the area proposed to be served by the Letcher County Water and Sewer District. In addition, the record shows that there is no other existing water supplier in Letcher County which can serve the area sought to be served by the proposed district more feasibly. In fact, all of the other significant water and sewer suppliers in Letcher County,

⁸ Transcript at 22-23, 42-43, 75-76, and 86.

⁹ Transcript at 27.

the municipalities, through their mayors, have expressed their strong support for the creation of the proposed district and made it clear that their cities do not have the resources to extend the needed water and sewer lines into the county. Furthermore, while KRS 278.280 authorizes the Commission to compel utilities under its jurisdiction to make reasonable extensions, the municipal utilities in Letcher County are not under the Commission's jurisdiction and thus cannot be compelled by the Commission to extend their services any further into the county.

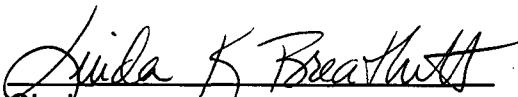
Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that the geographical area sought to be served by the proposed district cannot be feasibly served by any existing water supplier. Thus, pursuant to KRS 74.012(3), the application for creation of the Letcher County Water and Sewer District should be approved.

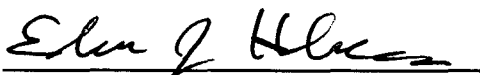
IT IS THEREFORE ORDERED that:

1. The application filed by the five freeholders from Letcher County seeking the Commission's approval for the establishment of a water district is approved.
2. The Applicants shall immediately notify the Commission if and when the proposed water district is created by the Letcher County Fiscal Court pursuant to the requisite statutes, and shall comply with all statutes and regulations which require Commission approval of initial and continuing operations.

Done at Frankfort, Kentucky, this 19th day of May, 1997.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director