

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF TROUBLESOME CREEK)	
ENVIRONMENTAL AUTHORITY, INC., A PUBLIC)	
NON-PROFIT CORPORATION, FOR A)	
CERTIFICATE OF PUBLIC CONVENIENCE AND)	CASE NO. 2010-00017
NECESSITY TO CONSTRUCT FACILITIES AND)	
TO OPERATE, FOR INITIAL RATES, AND FOR)	
AUTHORITY TO INCUR INDEBTEDNESS)	

ORDER

Troublesome Creek Environmental Authority, Inc. ("TCEA") has applied for a Certificate of Public Convenience and Necessity to construct wastewater treatment and collection facilities and to provide wastewater collection and treatment service in Knott County, Kentucky. Having reviewed the application¹ and being otherwise sufficiently advised, the Commission finds that:

1. On August 8, 2006, the County Judge Executives of Breathitt, Knott, and Perry Counties, Kentucky formed and incorporated TCEA under the provisions of KRS Chapter 273 to improve the water quality of the Troublesome Creek Watershed.

¹ On January 14, 2010, TCEA tendered its application to the Commission. In this application, TCEA requested a Certificate of Public Convenience and Necessity to construct certain wastewater treatment and collection facilities and to provide wastewater treatment service, authority to execute an assistance agreement to borrow \$1,500,000, and for approval of rates for the provision of service. After being advised of deficiencies in its application, TCEA tendered a supplemental application on February 8, 2010. Because TCEA does not specifically request approval of specific rates in its application and supplemental application, we do not address that issue in this Order. Moreover, since the facts presented suggest that Commission approval of the proposed assistance agreement may not be required, we have not addressed that request except to provide guidance on when KRS 278.300 requires our prior approval.

2. Troublesome Creek is a tributary of the Kentucky River.
3. The Troublesome Creek Watershed is approximately 246 square miles, or 157,440 acres, and covers the central portion of Knott County, the northeastern portion of Perry County, and the southeastern portion of Breathitt County.
4. The Ball Creek area of Knott County, Kentucky is located within the Troublesome Creek Watershed.
5. Approximately 14,000 persons reside within the Troublesome Creek Watershed.
6. In its 2008 report to Congress on the condition of surface waters in Kentucky, which was mandated by the Federal Clean Water Act, the Kentucky Division of Water identified Troublesome Creek as impaired for one or more pollutants and as not meeting one or more water quality standards.²
7. TCEA proposes to construct in the Ball Creek Area of Knott County, Kentucky a 100,000 gallon-per-day sequential batch reactor wastewater treatment plant; 4,520 linear feet of 12-inch polyvinylchloride gravity sewer main; 27,580 linear feet of 6-inch high-density polyethylene ("HDPE") force main; 6,450 linear feet of HDPE force main; a 200 gallon-per-minute regional lift station; and approximately 40 residential grinder pump stations.
8. Estimated total cost of the proposed facilities is \$4,263,817.
9. TCEA proposes to finance the proposed facilities using the following funding sources: a loan of \$1,500,000 from the Kentucky Infrastructure Authority

² Division of Water, Kentucky Environmental and Public Protection Cabinet, *2008 Integrated Report to Congress on the Condition of Water Resources in Kentucky* at A.32 (May 2008).

("KIA"),³ a grant of \$500,000 from the U.S. Army Corps of Engineers; an appropriation of \$1,425,000 from the Kentucky General Assembly;⁴ a grant of \$450,000 of Kentucky Local Government Economic Development Single County Funds; and a grant of \$388,817 from Kentucky Local Government Economic Development Multi-County Funds.

10. R.M. Johnson Engineering, Inc. prepared the drawings and specifications for the proposed improvements.

11. DOW has approved the plans and specifications for the proposed facilities.

12. The current population of the Ball Creek area is 2,096. Most of this population uses either failing septic tanks or straight pipes.⁵

13. There are currently no wastewater treatment facilities in the immediate vicinity of the Ball Creek area.

14. The proposed improvements will not conflict with the existing service of other utilities operating in the same area and under Commission jurisdiction.

³ Letter from Sandy Williams, Financial Analyst, KIA, to Lewis Warrix, Chairman, TCEA (Dec. 7, 2009) at 1. A portion of the loan proceeds will be funded through funds provided pursuant to the American Recovery and Reinvestment Act. The Assistance Agreement between KIA and TCEA provides for approximately 52.1 percent of the loan principal amount to be forgiven.

⁴ 2008 Ky. Acts Ch. 191.

⁵ See Division of Water, Kentucky Environmental and Public Protection Cabinet, *State Planning and Environmental Assessment Report for Ball Creek Wastewater Treatment Plant and Collection Lines Project* (Oct. 29, 2009) at 4, available at <http://www.water.ky.gov/NR/rdonlyres/19F31A3C-6AE7-43B3-98C8-2D4B57C8E9BB/0/SignedSPEARTroublesomeCreek111.pdf>. A straight-pipe is a sewage disposal system that transports raw or partially settled sewage directly to a lake or stream, to a drainage system, or onto the ground.

15. The proposed improvements will not create wasteful duplication of plant equipment, property or facilities.

16. The public convenience and necessity require the construction of the proposed improvements.

17. KRS 278.300(1) provides that “[n]o utility shall issue any securities or evidences of indebtedness . . . until it has been authorized to do so by order of the [C]ommission.”

18. KRS 278.010(3)(f) defines a utility as “any person except . . . a city, who owns, controls, operates, or manages any facility used or to be used for or in connection with . . . the collection, transmission, or treatment of sewage for the public for compensation”

19. As TCEA does not currently own, control, operate or manage any facilities used for or in connection with the collection, transmission, or treatment of sewage for the public for compensation, KRS 278.300(1) does not require TCEA to obtain Commission approval prior to executing an assistance agreement with KIA to borrow \$1,500,000. If TCEA intends to execute such an agreement with KIA after the construction of the proposed facilities, KRS 278.300(1) will require prior Commission approval.

IT IS THEREFORE ORDERED that:

1. TCEA is granted a Certificate to provide wastewater treatment and collection services within the Troublesome Creek Watershed.

2. TCEA is granted a Certificate to proceed with the proposed construction as set forth in its application.

3. TCEA shall notify the Commission prior to performing any additional construction not expressly authorized by this Order.

4. Any deviation from the construction approved shall be undertaken only with the prior approval of the Commission.

5. TCEA shall file a copy of the "as-built" drawings and a certified statement that the construction has been satisfactorily completed in accordance with the contract plans and specifications within 60 days of substantial completion of the construction certificated herein.

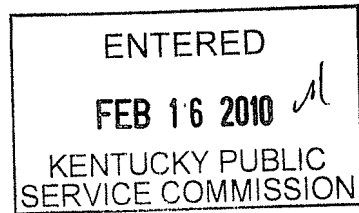
6. TCEA shall require construction to be inspected under the general supervision of a licensed professional engineer with a Kentucky registration in civil, electrical, or mechanical engineering, to ensure that the construction work is done in accordance with the contract drawings and specifications and in conformance with the best practices of the construction trades involved in the project.

7. TCEA shall not begin providing wastewater treatment and collection service to the public for compensation until it has filed with the Commission schedules showing all rates and conditions for such service and such schedules have received Commission approval.

8. Subject to the filing of timely petition for rehearing pursuant to KRS 278.400, these proceedings are closed. The Executive Director shall place any future filings in the appropriate utility's general correspondence file or shall docket the filing as a new proceeding.

9. Any documents filed pursuant to Ordering Paragraph 5 shall reference this case number and shall be retained in the utility's general correspondence file.

By the Commission



ATTEST:



Executive Director

Calvin R Tackett
Esquire
40 Main Street
Whitesburg, KY 41858