

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CHRIS SCHIMMOELLER	)	
and	)	
CONNIE LEMLEY	)	
	)	
COMPLAINANTS	)	
	)	
v.	)	CASE NO. 2009-00096
	)	
KENTUCKY-AMERICAN WATER COMPANY	)	
	)	
DEFENDANT	)	

ORDER TO SATISFY OR ANSWER

On February 27, 2008, Chris Schimmoeller submitted to the Commission a letter<sup>1</sup> in which she requests certain relief from Kentucky-American Water Company ("Kentucky-American"), to include cessation of all construction activity related to the facilities that were the subject of Case No. 2007-00134.<sup>2</sup> She alleges, *inter alia*, that changing economic conditions render the construction of the facilities unreasonable and that Kentucky-American is "failing to abide by the provisions of its [construction] permits."

In a subsequent letter to the Commission,<sup>3</sup> in which she seeks to amend her initial request, Ms. Schimmoeller alleges that Kentucky-American has substantially

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<sup>1</sup> Exhibit A.

<sup>2</sup> Case No. 2007-00134, Application of Kentucky-American Water Company for a Certificate of Public Convenience and Necessity Authorizing the Construction of Kentucky River Station II, Associated Facilities and Transmission Main (Ky. PSC April 25, 2008).

<sup>3</sup> Exhibit B.

deviated from the plans and specifications of the project for which the Commission issued a certificate of public convenience and necessity in Case No. 2007-00134. More specifically, she alleges that Kentucky-American has recently sought changes in its construction permits to permit the extended closure of several public roads along the path of the facilities and that these changes are contrary to the representation that the utility made in Case No. 2007-00134.

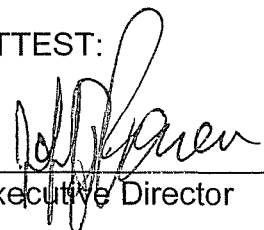
On March 16, 2009, Connie Lemley submitted a letter<sup>4</sup> to the Commission in which she made similar allegations and requested relief from Kentucky-American similar in nature to that Ms. Schimmoeller requests.

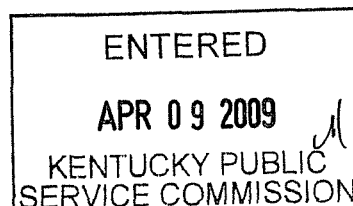
Having reviewed these letters, each of which is attached as an exhibit to this Order, the Commission finds that each should be treated as a formal complaint and that, for purposes of administrative efficiency and economy, the complaints should be consolidated into one docket and that Kentucky-American should be required to respond to them.

Pursuant to 807 KAR 5:001, Section 12, Kentucky-American is **HEREBY ORDERED** to satisfy the matters complained of or file a written answer to the complaints within 10 days from the date of service of this Order.

Should documents of any kind be filed with the Commission in the course of this proceeding, the documents shall also be served on all parties of record.

By the Commission

ATTEST:  
  
Executive Director



February 25, 2009

Mr. Jeff R. DeRouen  
Executive Director  
Public Service Commission  
211 Sower Blvd.  
Frankfort, KY 40601

RECEIVED

FEB 27 2009

PUBLIC SERVICE  
COMMISSION

2009-00096

RE: Request to re-open PSC Case No. 2007-00134 given changed circumstances

Dear Mr. DeRouen:

Kentucky American Water's treatment plant/pipeline project (2007-00134) has been described by your agency as one of the most complex cases ever heard.

As you know, the project was and continues to be extremely controversial. We believe that the rationale provided in the PSC's April 25, 2008 order issuing Kentucky American Water a Certificate of Public Convenience & Necessity is no longer valid given changed circumstances.

For instance, as we detailed in our January 17, 2009 email to you, KAW is failing to abide by the provisions of its permits and the state largely is failing to enforce those permits.

Your agency issued its Certificate to KAW partly on the grounds that the company had obtained necessary permits. The assumption behind this logic is that the permits would be honored or, if not, enforced to ensure compliance.

This assumption is not borne out by KAW's or the state's track record on the ground.

Secondly, your agency's order characterized KAW's project as an example of regional collaboration. Changed circumstances make that statement blatantly wrong. Specifically, the BWSC failed to buy a 5% share in the water treatment plant, making it wholly owned by KAW. Winchester has decided to build its own water treatment plant. Five utilities from Frankfort to Louisville have formally created a regional commission that will bring water east from Louisville along the I-64 corridor.

Most importantly, changed economic circumstances nationally and internationally make your agency's assertion that KAW's project represented a least cost option no longer valid. Demand for water is certain to cool as heavy industry slows production. As an example, Toyota is producing fewer cars than expected in Georgetown. Toyota is a KAW customer.

We submit that the rate increases that will result as KAW attempts to recoup the costs of its infrastructure investment represent a harsh undue burden on rate payers at a time of economic duress.

In litigation KAW has failed to provide evidence that it has the right to condemn land outside its service area. This lack of statutory power will force the company to make costly route changes or other alterations to its plans that will further inflate the cost of the project.

At a time when the federal government can only guarantee 0% return on investment, we believe that it is egregious and unreasonable for the state of Kentucky to allow a for-profit company to make a 10-12% profit on its investment.

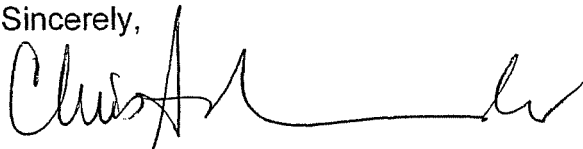
A number of reasonable, lower-cost options for supplying central Kentucky with water were presented during the administrative proceedings for Case No 2007-00134.

Given the profoundly different economic circumstances and the other reasons listed above, we submit that the Public Service Commission either take a second look at its conclusions in the instant case or open a new case to address these significant concerns.

While KAW is implementing its project, the company is nowhere near completion. Please address our concerns with urgency so meaningful action can be taken.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Schimmoeller", with a long horizontal flourish extending to the right.

Chris Schimmoeller  
660 Mt. Vernon Rd.  
Frankfort, KY 40601  
502) 226-5751

cc: ✓ Gerald Wuetcher  
Julian Carroll  
Carl Rollins  
Tom FitzGerald

March 18, 2009

Jeff Derouen  
Executive Director  
Public Service Commission  
211 Sower Blvd.  
Frankfort, KY 40601

RECEIVED

MAR 23 2009

PUBLIC SERVICE  
COMMISSION

Re: Case No. 2009-00096

Dear Mr. Derouen:

Please consider this letter as an amendment to my letter of February 25, 2009, which was assigned Case No. 2009-00096.

I have requested that Case No. 2007-00134 be reopened given changed circumstances. This amendment submits that in addition to changed circumstances, this project has changed so much that it is no longer the same project that the PSC approved.

Specifically, I learned yesterday that Kentucky American Water (KAW) had applied to the state for a permit to close Jones Lane, which runs from the Switzer Bridge to the Woodlake Road. (Personal communication, Chuck Knowles, Deputy State Highway Engineer, 3-17-09). KAW testified under oath that their project would involve only 10-15 minute delays. Concerns about road closures were raised during the administrative proceedings for 2007-00134. KAW testified that they had all the necessary permits in place and that there would only be temporary road delays.

The company's application for a road closure represents a significant change in the project.

I believe that KAW grossly misrepresented their project in order to gain your agency's approval. Choosing to apply for road closures when their heavy equipment is approaching is an intimidating and inappropriate maneuver which must not be tolerated.

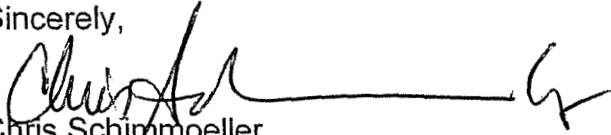
Jones Lane will not be the only road closure that KAW will need. Pipeline construction crews have hop scotched at least two other areas (Sections of 2919 and Rocky Branch/1262) in Franklin County where narrow roads and steep slopes make widening the ROW impossible. This means more petitions for road closures in the future. This construction strategy also involves costly and dangerous transport of heavy equipment, added expense, and further

deterioration of county and state roads – factors that were also not considered in the original project before the commission.

If KAW wants to change its project it must first get approval from the PSC. As it stands today, the project that is being implemented on the ground is a different project than the one your agency approved.

Please consider this matter with urgency.

Sincerely,



Chris Schirmmoeller  
660 Mt. Vernon Rd  
Frankfort, KY 40601  
502-226-5751 x3

3-20-09

Since drafting this letter I have learned that KAW has applied to close the other sections of road mentioned in this letter. They have also requested to waive the requirements to limit their hours of operation and to sod the ditchlines, measures that were in place to protect the public and the environment.



Connie Lemley  
2235 Gregory Woods Rd  
Frankfort, KY 40601  
(502) 223-7936

case 2007-00134  
Public Service Commission  
211 Sower Blvd  
Frankfort, KY 40601

RECEIVED

MAR 16 2009

PUBLIC SERVICE  
COMMISSION

To Whom it May Concern:

I am writing to ask you to reopen the Kentucky American Pipeline Case (2007-00134).

Kentucky American Water Company has made many changes to the pipeline route, and it is becoming more and more clear that the project that the PSC approved is not the project that is happening here on the ground.

Kentucky American Water (KAW) was given the go ahead for this project with the understanding that they would fulfill the terms of their permits. This has not been happening. The KY Dept. of Transportation (DOT) has a long list of safety violations, and it has even taken the unusual step of asking an inspector to dedicate much of his/her time to ~~at~~ monitoring compliance because KAW's violations have been so flagrant. (The violations continue) KAW is also required to employ adequate erosion control measures and to resod the ditchline. The erosion control measures that are in place are inadequate and are poorly maintained and KAW is leaving swaths of bare soil in its wake. This is unacceptable.

In addition to this, KAW was allowed to do this project because the PSC considered their plan to be ready to implement. KAW said that they had all their permits and were ready to go. However, this is not the case. KAW still needs a permit from DOT to close the roads, and they have yet to even request this permit.

Furthermore, there is a case in Franklin County Circuit Court considering whether KAW has the right to condemn land outside of their service area. Building the project as planned depends on their ability to do this, and KAW has yet to demonstrate that they have the right to condemn land along the pipeline route.

This project should not be allowed to proceed until KAW can demonstrate that they can complete it as planned. Doing so requires that KAW is able to close the roads and condemn land, and their ability to do either is currently in question. Because of this, KAW is hopscotching along the pipeline route. This piecemeal approach to the project is causing unnecessary delays for local residents, excessive damage to local roads, additional traffic from heavy trucks and equipment, and, probably, is adding significantly to the cost of construction. This, too, is unacceptable.

Please reopen case 2007-00134 so that the PSC can reconsider the changed circumstances of this ~~project~~ case and do its duty to protect the citizens and ratepayers of Kentucky. Thank you.

Sincerely,  
Connie Jensen



Nick O Rowe  
President  
Kentucky-American Water Company aka Kentucky  
2300 Richmond Road  
Lexington, KY 40502

Chris Schimmoeller  
660 Mt Vernon Ridge  
Frankfort, KY 40601