

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF BARNESBURG )  
WATER ASSOCIATION, INC., OF )  
PULASKI COUNTY, KENTUCKY, FOR )  
ORDER APPROVING CONSTRUCTION ) CASE NO. 94-495  
FINANCING, CERTIFICATE OF PUBLIC )  
CONVENIENCE AND NECESSITY, AND )  
INCREASED RATES )

O R D E R

On December 8, 1994, Barnesburg Water Association, Inc. ("Barnesburg") submitted to the Commission an application for a Certificate of Public Convenience and Necessity to undertake a \$1,206,800 waterworks construction project, for approval of its financing plan for this project, and for approval of increased water rates. This project would extend Barnesburg's present waterworks system in rural Pulaski County. Project funding included a loan not to exceed \$415,100 from Farmers Home Administration, now known as Rural Economic and Community Development Services ("RECD"); a Rural Development Administration ("RDA") grant of \$501,800; an Appalachian Regional Commission ("ARC") grant of \$250,000; and \$40,000 in Barnesburg funds.

Barnesburg's application was made pursuant to the provisions of KRS 278.023, which applies to any construction project undertaken by a water association, commission, district, or combined water, gas or sewer district which is financed in whole or in part under the terms of an agreement between the water utility and the U.S. Department of Agriculture or the U.S. Department of

Housing and Urban Development. KRS 278.023 declares that "such agreements shall be accepted by the Public Service Commission, and that the Commission shall not prohibit a water utility from fulfilling its obligations under such an agreement."

The Commission routinely grants Certificates of Public Convenience and Necessity, approves proposed financing plans, and approves increased rates as required by KRS 278.023 when there are agreements between water utilities and the appropriate federal agencies, but Barnesburg's existence is no longer recognized by the Commission. On February 22, 1988, in Case No. 9967,<sup>1</sup> and pursuant to KRS 74.361, the Commission ordered Barnesburg to merge with three other Pulaski County water associations. These three, Elihu-Rush Branch Water Association, Nelson Valley Water Association, and Tateville Water Association subsequently merged to become Southeastern Water Association, Inc. ("Southeastern"); while Barnesburg, on the current application attempt, continues to act in total disregard of a lawful Commission Order. Barnesburg should not be rewarded for such malfeasance. The Commission, while compelled by KRS 278.023 to accept the agreement between Barnesburg and RECD, cannot accept an application from an entity that in its eyes does not exist. To do so would contradict the Commission's own Order.

---

<sup>1</sup> Case No. 9967, The Proposed Merger of Barnesburg Water Association, Bronston Water Association, Elihu-Rush Branch Water Association, Nelson Valley Water Association, Oak Hill Water Association, Pleasant Hill Water District, Pulaski County Water District No. 1, Pulaski County Water District No. 2, and Tateville Water Association

KRS 74.361(1) establishes a statutory basis for merger and sets forth the purposes of merger.

The general assembly of the Commonwealth of Kentucky determines as a legislative finding of fact that reduction of the number of operating water districts in the Commonwealth will be in the public interest, in that mergers of such districts will tend to eliminate wasteful duplication of costs and efforts, result in a sounder and more businesslike degree of management, and ultimately result in greater economies, less cost, and a higher degree of service to the general public; and that the public policy favors the merger of water districts wherever feasible.

KRS 74.361(9) makes the statute applicable to water associations as well.

Prior to the Commission's February 22, 1988 Order, there were nine water utilities serving Pulaski County. In the spirit of KRS 74.361(1) and in accordance with KRS 74.361(2), the Commission established a proceeding on July 21, 1987, regarding the merger of these utilities. Following a feasibility study by Commission staff and a public hearing, the Commission, convinced that consolidation offered the best means by which to provide for customer growth, to enhance economic development, and to provide safe and dependable water for the citizens of the region, determined that three of the utilities should merge into a single district; four, including Barnesburg, should merge into a single association; one, due to geographical separation and a distinct water supply, should not be merged; and one, having already applied to do so, should be allowed to transfer its system to a municipality. Case No. 9967 thus attempted to reduce the number of water utilities in Pulaski County from nine to four in compliance with KRS 74.361.

Due to the refusal of several of the utilities to comply with the February 22, 1988 Order, the Commission filed a verified Complaint in Franklin Circuit Court pursuant to KRS 278.390 on August 7, 1992 requesting the Court to compel compliance. This case, 92-CI-01151, is still pending.

In addition to providing a means for the Commission to compel obedience to its lawful orders through mandamus, injunction, or other proceeding in Franklin Circuit Court, KRS 278.390 states that:

Every order entered by the Commission shall continue in force until the expiration of the time, if any, named by the Commission in the order, or until revoked or modified by the Commission, unless the order is suspended, or vacated in whole or in part, by order or decree of a court of competent jurisdiction.

As the final order in Case No. 9967 did not have an expiration date, has not been revoked or modified by the Commission, or has not been suspended or vacated, it continues to be in force.

By its refusal to comply with the Commission's Order in Case No. 9967, Barnesburg is not only failing to obey an order of the Commission, but is frustrating the furtherance of the legislative intent behind KRS 74.361 as well. The general assembly of the Commonwealth of Kentucky determined that public policy favors the merger of water associations wherever feasible. KRS 74.361 authorizes and empowers the Commission, after a full feasibility investigation and a public hearing, to order the merger of water associations. The Commission cannot accept Barnesburg's application. Barnesburg should no longer exist as a separate

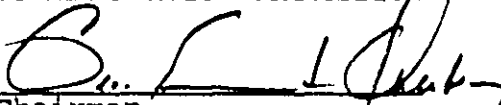
entity, but should have merged with Southeastern. Barnesburg cannot on its own validly construct, borrow money, or raise rates. Should Barnesburg merge with Southeastern, the resulting entity could validly construct, borrow money, or raise rates to improve service in Barnesburg's former service territory.

While KRS 278.023 requires the Commission to accept agreements involving federally financed construction projects and water utilities, Barnesburg is not, due to a lawful order of the Commission, a utility.

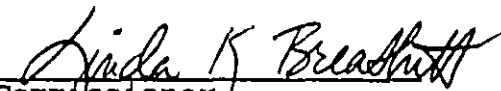
IT IS THEREFORE ORDERED that Barnesburg's application for a Certificate of Public Convenience and Necessity, for approval of its proposed financing plan, and for approval of increased water rates is hereby rejected.

Done at Frankfort, Kentucky, this 24th day of March, 1995.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director