

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION FOR AUTHORITY TO PETITION THE)
COUNTY/JUDGE EXECUTIVE OF BREATHITT) CASE NO. 98-502
COUNTY, KENTUCKY FOR THE ESTABLISHMENT)
OF A WATER DISTRICT)

ORDER

Five residents of Breathitt County, Kentucky have applied to the Commission for authority to petition the Breathitt County Judge/Executive for the establishment of a water district that comprises all unincorporated areas of Breathitt County, Kentucky. Their application presents the following issue: Can any existing water supplier feasibly serve the unincorporated areas of Breathitt County? Finding in the negative, we grant the application.

PROCEDURE

On September 23, 1998, R.D. Gabbard, Eugene Smith, Ina Southwood, John Lester Smith and Georgia Jett (the Applicants) applied to the Commission for authority to petition the Breathitt County Judge/Executive to establish a water district in Breathitt County, Kentucky. The Commission conducted a public hearing on the application on March 3, 1999. The Commission subsequently served notice of these proceedings upon all water suppliers in the general geographical area that the proposed water district would serve and directed each supplier to advise the Commission in writing of the feasibility of serving the proposed water district s service territory. Following receipt of these responses, the case was submitted for decision.

STATEMENT OF THE CASE

The Applicants propose the creation of a water district comprised of all unincorporated areas of Breathitt County, Kentucky. According to 1990 Census information, 13,237 persons resided in this area.¹ Based upon U.S. Census Bureau information, the petitioners estimate that the proposed water district has approximately 3,500 potential customers within its proposed service area.² No existing water supplier currently provides water service to this area. The principal source of water for those residing in the proposed water district's service area is well water.³ Much of the well water in the area is contaminated or of poor quality.⁴

The Applicants envision that the proposed water district would purchase water from the city of Jackson, Kentucky (Jackson). Jackson's present water treatment system lacks sufficient capacity to reliably serve the proposed water district.⁵ Jackson, however, expects to receive federal and state funding to upgrade its treatment facilities to serve the proposed water district and is willing to serve as the proposed water district's wholesale water supplier after its facilities are upgraded.

¹ According to the 1990 U.S. Census, approximately 15,703 persons resided in Breathitt County, Kentucky. Approximately 2,466 persons resided within Jackson, Kentucky.

² This estimate is consistent with the U.S. Census Bureau reports. According to the 1990 U.S. Census, approximately 4,577 of the 5,487 households in Breathitt County were outside of Jackson's incorporated area.

³ The U.S. Census Bureau reports that, as of 1990, private wells provided water service to approximately 3,896 of the 6,127 housing units in Breathitt County, Kentucky.

⁴ Transcript of 3/3/1999 Hearing at 15 16.

⁵ Id. at 12, 24 - 27.

Under the Applicants proposal, the proposed district would require \$4.6 million to construct initial facilities. The Applicants estimate that approximately \$3.1 million of this amount would be obtained from governmental grants. The proposed water district would use this funding to construct 142,000 feet of pipeline for initial service to 500 customers, including an elementary school. Applicants estimate that the initial minimum monthly bill for water service would be approximately \$25.

The Applicants identified the following water suppliers as within the area: Beattyville Water Works, Booneville Water and Sewer District, Campton Water Works, Caney Creek Water District, Hazard Water, Hindman Water and Sewer Department, Jackson, Magoffin County Water District, Salyersville Water and Sewer Commission, Southside Water Association, and Vicco Water System. With the exception of Jackson, none of these systems is located within Breathitt County. Moreover, they have not expressed any interest in providing water service to the proposed water district's service area. Several suppliers indicated that the proposed service area's terrain, as well as its distance from their facilities, renders service to the proposed water district's service area economically unfeasible.

Jackson is the only existing water supplier with the potential ability to serve the proposed water district's service territory. After completion of its facilities upgrade, it would have the capacity to serve the proposed water district's service area. Jackson officials testified that the city would not provide direct service to the proposed water district's service territory. Because of the proposed area's low customer density, terrain, and size, Jackson believes that direct service to unincorporated areas of Breathitt County would adversely affect the rates of its existing customers.

The Applicants argue that, in addition to Jackson's unwillingness to provide retail service to unincorporated areas of Breathitt County, funding considerations support the formation of a water district. They note that because of the unique demographics of the water district's proposed service area, the proposed water district would receive high priority in the allocation of public funds. If Jackson applied for federal funding to provide retail service to the proposed service area, its application is likely to be given lower priority.⁶

DISCUSSION

KRS 74.012 requires that, before any person may petition a county judge/executive for the establishment of a water district, he must first apply to the Commission for authority to make such petition. KRS 74.012(3) provides:

Before the Public Service Commission shall approve any application for creation of a water district or water association, **the commission must make a finding and determination of fact that the geographical area sought to be served by such proposed water district or water association cannot be feasibly served by any existing water supplier, whether publicly or privately owned and whether or not subject to the regulatory jurisdiction of the commission.** If it shall be determined that the geographical area sought to be served by the proposed water district or water association can be served more feasibly by any other water supplier, the commission shall deny the application and shall hold such further hearings and make such further determinations as may in the circumstances be appropriate in the interests of the public health, safety and general welfare. [Emphasis added.]

The General Assembly enacted KRS 74.012 as part of a package of statutory revisions to prevent the unnecessary proliferation of water districts. This package included KRS 74.361, which provides for the merger of water districts and which

⁶ Id. at 13 14.

declares that reduction of the number of operating water districts in the Commonwealth will be in the public interest. See 1972 Ky. Acts 1462.

While the literal language of KRS 74.012 requires the Commission to consider existing municipal facilities in making its determination, the Commission has interpreted a municipal utility's refusal to provide service as a basis for finding that no existing water supplier can feasibly serve a proposed service area. In Creation of Letcher County Water and Sewer District, Case No. 96-515 (Ky. P.S.C. May 19, 1997), the residents of Letcher County, Kentucky applied for authority to create a water and sewer district to serve the unincorporated sections of Letcher County, Kentucky. During that proceeding, Commission Staff reported to the Commission that significant areas of the proposed district could feasibly be served by existing municipal utilities. Noting that these municipal utilities refused to directly serve the proposed areas, that county residents were hostile to annexation of unincorporated areas, and that the Commission lacked the authority to compel any municipality to extend service, the Commission rejected the Commission Staff's findings and found that the proposed service area could not be feasibly served by an existing water supplier.

Based upon our review of the evidence of record, we find that no existing water supplier can feasibly provide water service to the unincorporated areas of Breathitt County, Kentucky. Aside from Jackson, no other existing water supplier has adequate facilities to provide water service and none has demonstrated any willingness to assume the expense to make such expansions necessary to provide such service. The most likely water supplier, Jackson, has indicated that it currently lacks the ability to serve the unincorporated areas of Breathitt County, Kentucky and will not provide direct

water service even when its facilities are upgraded. Given our holding in Letcher County Water and Sewer District and Jackson's unwillingness to provide direct service to the area in question, we find that the Applicants' Application should be granted.

SUMMARY

Based upon the evidence of record and the findings set forth above, the Commission HEREBY ORDERS that:

1. The Applicants' Application for Authority to Petition the County Judge/Executive of Breathitt County, Kentucky for the Establishment of a Water District is granted.

2. Should Breathitt County Fiscal Court grant Applicants' Petition for the Establishment of a Water District, the Applicants shall notify the Commission in writing with 20 days of the Fiscal Court's action.

Done at Frankfort, Kentucky, this 2nd day of December, 1999.

By the Commission

ATTEST:

Executive Director