

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:)
)
THE VERIFIED JOINT APPLICATION OF)
EASTERN ROCKCASTLE WATER ASSOCIATION) **CASE NO. 2017-00383**
AND KENTUCKY-AMERICAN WATER COMPANY)
FOR THE TRANSFER OF CONTROL AND ASSETS)

JOINT APPLICANTS' BRIEF

Kentucky-American Water Company (“KAW”) and Eastern Rockcastle Water Association (“ERWA”) (collectively, the “Joint Applicants”) hereby submit this joint brief in support of their Joint Application and in accordance with the Commission’s December 21, 2017 Order in this matter. Joint Applicants filed this matter for the purpose of obtaining the Commission’s approval of the sale of ERWA’s assets to KAW as well as a “change of control” of utility services provided by ERWA to its customers. As set forth below, the record proves that KAW has the “financial, technical, and managerial abilities to provide reasonable service”¹ to ERWA’s customers and that the proposed transaction is “consistent with the public interest.”² Therefore, the Commission should approve the Joint Application.

PROCEDURAL HISTORY

On September 19, 2017, KAW and ERWA entered into an Asset Purchase Agreement (“APA”) under which they agreed that ERWA assets would be sold to KAW for a purchase price not to exceed \$770,000.³ Under the APA, the Joint Applicants are required to complete a number of steps prior to the actual closing of the deal. One of those steps is that they must

¹ KRS 278.020(6)

² KRS 278.020(7).

³ APA, pp. 1-2. (A copy of the APA is attached to the September 22, 2017 Joint Application in this matter).

obtain approval from the Commission allowing the sale of assets and change of control contemplated in the APA.⁴ Therefore, on September 22, 2017, the Joint Applicants filed their Verified Joint Application in this matter.

After the Joint Application was filed, the Commission determined it to be sufficient for consideration⁵ and then issued a procedural schedule for the case. Under the procedural schedule, the Commission imposed a deadline for intervention requests, discovery deadlines, and indicated that it would decide the case no later than January 19, 2018.⁶ Messrs. James E. Ballinger and Thomas P. Dupree, Jr. (“Intervenors”) moved to intervene on October 20, 2017. Joint Applicants did not oppose that intervention and the Commission granted it by Order of October 30, 2017. Discovery ensued with Commission Staff propounding two rounds of discovery to Joint Applicants. The Intervenors also propounded two rounds of discovery to the Joint Applicants. At the close of discovery, the Intervenors indicated that a hearing would not be necessary *if* the Commission allowed into the record extraneous evidence related to an effort by ERWA to seek funding for a capital project and *if* the Commission allowed briefs in the case.⁷ At the same time, Joint Applicants indicated a hearing would not be necessary and that briefs should not be allowed.⁸ The Commission decided that briefs should be allowed no later than December 29, 2017, at which time the case would be submitted for a decision.⁹ In accordance with that Order, the Joint Applicants submit this brief. As set forth below, the proposed transaction should be approved.

⁴ APA, p. 8.

⁵ See the Commission’s September 28, 2017, letter accepting the Joint Application for processing.

⁶ October 17, 2017, Order.

⁷ Intervenors’ December 8, 2017, Statement and Motions.

⁸ Joint Applicants’ December 8, 2017, Statement Regarding Hearing.

⁹ December 21, 2017, Order.

ARGUMENT

The legal issue before the Commission is whether KAW has the “financial, technical, and managerial abilities to provide reasonable service”¹⁰ and whether the proposed transaction is “consistent with the public interest.”¹¹ It does not appear that the Intervenor contest whether KAW has the financial, technical, and managerial abilities to provide reasonable service. Not only does KAW already provide water service to the residents of Lexington (Kentucky’s second largest city), it has a long track record of adding new customers outside Fayette County through various transactions. Some of those additions required Commission approval, which was given,¹² and some did not require Commission approval.¹³ In any event, KAW’s existing operations¹⁴ and the Commission’s familiarity with those operations show that, without question, KAW has the required financial, technical, and managerial abilities.

It appears that the Intervenor will contest whether the proposed transaction is “consistent with the public interest,” as their Motion for Leave to Intervene refers only to it.¹⁵ To date, the Intervenor have refused to reveal their “public interest” position in this case and have said they “will reserve substantive arguments for their brief.”¹⁶ Regardless, the record shows that the proposed transaction is in the public interest. The September 22, 2017, Joint Application, its supporting materials, and the discovery responses Joint Applicants have filed provide the

¹⁰ KRS 278.020(6)

¹¹ KRS 278.020(7).

¹² In its October 16, 1997, Order in Case No. 97-320, the Commission approved KAW’s acquisition of the former customers of the Boonesboro Water Association. In its June 8, 2001, Order in Case No. 2001-094, the Commission approved KAW’s acquisition of the former customers of the Tri-Village Water District. In its May 22, 2002, Order in Case No. 2002-00094, the Commission approved KAW’s acquisition of the former customers of Elk Lake Property Owners’ Association. And in its September 27, 2016, Order in Case No. 2016-00222, the Commission approved KAW’s acquisition of the former customers of Classic Construction, Inc. a/k/a Ridgewood.

¹³ KAW acquired the former customers of the City of Owenton in 2005 and the former customers of the City of Millersburg in 2014. Commission approval was not required for those acquisitions.

¹⁴ In Joint Applicants’ November 6, 2017, response to Item 3 of Commission Staff’s First Request for Information, KAW described the basic information proving it has the financial, technical, and managerial abilities to provide reasonable service to ERWA’s approximately 600 customers.

¹⁵ Intervenor’s October 23, 2017, Motion for Leave to Intervene, p. 2.

¹⁶ Intervenor’s December 15, 2017, Reply in Support of Motions, p. 2.

Commission with a complete record showing that the “public interest” requirement has been satisfied.¹⁷ It shows that ERWA customers will benefit from the efficiencies and economies of scale that KAW can provide from having a large customer base and from being a part of American Water Works Company, Inc. At times, ERWA’s small size has created challenges to making necessary repairs. The proposed transaction will allow for sufficient cash flow necessary to make needed infrastructure repairs and improvements.¹⁸ ERWA customers will have access to KAW’s technical assistance, billing and payment processes, customer service, and access to KAW’s 24-hour emergency service capabilities.¹⁹ They will enjoy lower equipment costs due to economies of scale.²⁰ In recognition of these benefits, ERWA’s leadership became interested in and ultimately reached the arms-length agreement for the proposed transaction.

It was not just ERWA’s leadership who decided this transaction is in the public’s interest. Indeed, a vast majority of ERWA customers voted in favor of this transaction (the vote was 231-41 in favor of the transaction).²¹ While the two individual intervenors in this case may disagree with the outcome of that vote, the vast majority of their fellow customers have spoken by ballot. And their ballots are perhaps the best indicator of all on the issue of whether this transaction is in the “public interest.”

As for the documents that were the subject of the Intervenor Motion for Admission Into Evidence²² which the Commission granted by its December 21, 2017 Order, the Intervenor have been silent as to their significance or exactly how they affect any issue in this case. In any event, those documents appear to be reflective of ERWA’s unsuccessful historical effort to obtain

¹⁷ See Item No. 16 of Joint Applicants’ November 6, 2017, Responses to Commission Staff’s First Request for Information for a full description of how and why the proposed transaction is in the public interest.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ See Item 6 of ERWA’s December 4, 2017, responses to Intervenor’s Information Request, p. 2 of 7.

²² The documents were attached as to Intervenor’s December 8, 2017, Statement Regarding Hearing and Motions.

funding for certain capital improvements to its system. They show that such funding was not obtained²³ for a project that was to have been started and completed by August 1, 2017.²⁴ They further show that the project in question ranks almost last (fourth out of five projects) for projects in Rockcastle County according to what purports to be the Cumberland Valley Area Development District's project rankings. Thus, if anything, the documents show that KAW's financial ability to invest in capital projects is exactly why the change of control should be approved. KAW has recognized the capital needs of the ERWA system in its discovery responses,²⁵ and, of course, ERWA is keenly aware of those needs. Thus, those documents are yet another reason why the proposed transfer should be approved and is in the public interest.

In approving KAW's acquisition of the ERWA customers, the Commission will be following the General Assembly's guidance set forth KRS 224A.300(1), which encourages the regionalization and consolidation of water and wastewater systems.²⁶ Additionally, the Commission will be following its own precedent in which it has explicitly encouraged KAW to become a regional water supplier.²⁷ The Commission should continue that encouragement and approving the proposed transaction will do so.

WHEREFORE, Joint Applicants respectfully request the Commission approve the relief requested in the Joint Application.

²³ See page 1 of 8 of the "Project Profile" indicating "not funded."

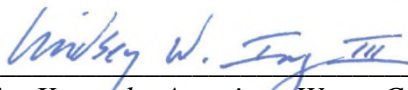
²⁴ See page 2 of 8 of the "Project Profile" showing an estimated completion date of August 1, 2017.

²⁵ See Item No. 12 of KAW's November 10, 2017, Responses to Intervenor's First Request for Information.

²⁶ In Case No. 2016-00222 involving KAW's acquisition of the Ridgewood wastewater customers, the Commission approved the proposed transaction and relied, in part, on KRS 224A.300(1)'s objective of encouraging consolidation and regionalization of water and wastewater systems. (September 27, 2016, Order, p. 6).

²⁷ Case No. 2012-00096, *Application of Kentucky-American Water Company for a Certificate of Convenience and Necessity Authorizing Construction of the Northern Division Connection*, February 28, 2013, Order, p. 19; Case No. 89-438, *Notice of Adjustment of Rates of Kentucky-American Water Company*, June 28, 1990, Order, p. 24("The Commission has and will continue to encourage Kentucky-American to become a regional supplier of water . . .").

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CERTIFICATE

This certifies that the electronic filing of this document is a true and accurate copy of the documents to be filed in paper medium; that the electronic filing has been transmitted to the Commission on December 29, 2017; that an original and six paper copies of the filing will be delivered to the Commission within two business days of the electronic filing; and that no party has been excused from participation by electronic means.

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