

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY-)	
AMERICAN WATER COMPANY FOR A)	
CERTIFICATE OF PUBLIC CONVENIENCE AND)	CASE NO.
NECESSITY AUTHORIZING THE)	2023-00248
CONSTRUCTION OF A WATER TRANSMISSION)	
MAIN TO THE CITY OF MILLERSBURG)	

ORDER

This matter arises from Kentucky-American Water Company's (Kentucky-American) application for a Certificate of Public Convenience and Necessity (CPCN) pursuant to KRS 278.020 for a project to construct a new water main to connect Kentucky-American's Millersburg system to other parts of Kentucky-American's system to allow Kentucky-American to both produce and supply the water to the Millersburg system in lieu of purchasing water from the city of Paris (Paris). Kentucky-American's application was accepted for filing on July 26, 2023. On August 14, 2023, Paris filed a motion to intervene, which was granted on August 28, 2023. Kentucky-American has responded to requests for information from Commission Staff and Paris. Neither Kentucky-American nor Paris requested a hearing in this case. This case is now before the Commission for a decision on the merits.

BACKGROUND

Kentucky-American is an investor owned corporation organized and existing under the laws of the Commonwealth of Kentucky.¹ Kentucky-American provides retail water service to approximately 134,511 customers² in Bourbon, Clark, Fayette, Franklin, Gallatin, Grant, Harrison, Jackson, Jessamine, Nicholas, Owen, Rockcastle, Scott, and Woodford counties, Kentucky.³ Kentucky-American had approximately \$109,311,080 in Operating Revenues⁴ and \$26,674,362 in Net Income in 2022.⁵ Kentucky-American's plant in service as of December 31, 2022, was valued at \$901,797,906⁶ and its accumulated depreciation was \$220,922,667.⁷ Kentucky-American's water loss in 2020, 2021, and 2022 was 20.47 percent, 21.08 percent, and 21.59 percent, respectively.⁸ Kentucky-American's last general rate case was filed in 2018.⁹

Kentucky-American requested a CPCN in this matter for a project to construct a new water main connecting the Millersburg system, which is owned and operated by

¹ Application at 1.

² *Annual Report of Kentucky-American to the Public Service Commission for the Year Ended Dec. 31, 2022* (2022 Annual Report) at 54.

³ 2022 Annual Report at 11.

⁴ 2022 Annual Report at 19.

⁵ 2022 Annual Report at 20.

⁶ 2022 Annual Report at 22.

⁷ 2022 Annual Report at 23.

⁸ 2022 Annual Report at 6; *Annual Report of Kentucky-American to the Public Service Commission for the Year Ended Dec. 31, 2021* (2021 Annual Report) at 61; *Annual Report of Kentucky-American to the Public Service Commission for the Year Ended Dec. 31, 2020* (2020 Annual Report) at 62.

⁹ Case No. 2018-00358, *Electronic Application of Kentucky-American Water Company for Adjustment of Rates* (filed Nov. 28, 2018), Application.

Kentucky-American, to other parts of Kentucky-American's system.¹⁰ Kentucky-American currently purchases the water required for Millersburg from Paris. The Millersburg system is currently supplied by a 6-inch main located south of Millersburg that connects to the Paris Water Works system. Kentucky-American stated that it currently has a contract with Paris to supply a daily average of 200,000 gallons of water per calendar month for Millersburg.¹¹ Kentucky-American stated that this is not sufficient to meet the demand of customers of the Millersburg system.¹² These customers include two wholesale customers, Harrison County Water Association and Nicholas County Water District, that are supplied from the Millersburg system.¹³

Kentucky-American stated that in 2022 the daily volume of water purchased from Paris exceeded 200,000 gallons in 6 of the 12 months, and that fires and main breaks can result in service interruptions.¹⁴ Kentucky-American stated that the limited quantity of water from Paris has limited fire protection for Millersburg. Kentucky-American's Engineering Project Manager, John Magner, indicated that the limited flow from Paris was not sufficient to adequately contain a fire in downtown Millersburg on June 22, 2022, that destroyed historic buildings, including a post office and multiple apartments.¹⁵ Kentucky-American provided a Preliminary Planning Study that discussed the need for a fire flow

¹⁰ Application at 2.

¹¹ Application at 2.

¹² Application at 2.

¹³ Application at 2.

¹⁴ Application at 2; *see also* Kentucky-American's Response to Commission Staff's First Request for Information (Staff's First Request) (filed Sept. 1, 2023), Item 14.

¹⁵ Direct Testimony of John Magner, Engineering Project Manager for Kentucky-American Water Company (Magner Direct Testimony) (filed Jul. 26, 2023) at 3.

demand of 500 gpm, stating that during the June 22, 2022 fire a recorded peak of 750 gpm was pumped to Millersburg, which completely emptied the Millersburg Pump Station ground tank and severely limited the amount of water that could be provided.¹⁶

Kentucky-American also stated that the current flow is not adequate for the material new development expected to occur on the Millersburg system or systems that rely on it. Kentucky-American stated that there have been numerous inquiries regarding additional water capacity including a potential new industrial park.¹⁷

Further, Kentucky-American stated that there are ongoing issues with the quality of the water provided from Paris.¹⁸ Kentucky-American indicated that water quality monitoring has measured elevated levels of total trihalomethanes and total halo acetic acids, which indicates a potential for disinfection byproduct formation. Kentucky-American provided a monthly breakdown of the high levels and several letters that had been sent to Paris regarding the high levels,¹⁹ but it has continued to be a problem. Kentucky-American's Engineering Project Manager also testified that the levels of trihalomethanes and total halo acetic acids were above the regulator maximum contaminate levels for nine of the twelve months in 2022.²⁰ As such, Kentucky-American stated that it filters its water purchased from Paris through granular activated carbon filters.²¹ Kentucky-American also stated that Paris does not add corrosion inhibitor

¹⁶ Magner Direct Testimony, Exhibit 2, at 3.

¹⁷ Magner Direct Testimony at 4.

¹⁸ Magner Direct Testimony at 4.

¹⁹ Kentucky-American's Response to Staff's First Request, Item 8.

²⁰ Magner Direct Testimony at 4.

²¹ Application at 3.

treatment to its water which assists in controlling lead release whereas Kentucky-American does include such treatment in the water that it produces.²²

Kentucky-American stated that the proposed main connecting the Millersburg system to other parts of Kentucky-American's system would resolve the capacity and water quality issues discussed above by giving Kentucky-American the capacity to supply the Millersburg system directly as well as capacity to meet additional demand. Furthermore, by producing and supplying the water for the Millersburg system, Kentucky-American stated the cost per gallon would be cheaper. Kentucky-American stated that in 2022 it purchased 76.3 million gallons from Paris at a total cost of \$187,000. However, Kentucky-American estimates it would cost approximately \$46,000 for it to produce the same amount of water.²³

Kentucky-American stated that it considered a number of alternatives for obtaining an adequate water supply to Millersburg. First, Kentucky-American indicated that it considered purchasing additional water from other utilities but stated that based on discussion with the surrounding utilities they are not able to provide additional water to Millersburg.²⁴ Kentucky-American also stated that it considered a number of alternative paths for the water main.

Specifically, Kentucky-American indicated that it completed hydraulic analyses of eight different routes.²⁵ Based on the hydraulic analyses, Kentucky-American stated that

²² Magner Direct Testimony at 4.

²³ Application at 6.

²⁴ Magner Direct Testimony at 4.

²⁵ Kentucky-American's Response to Staff's First Request, Item 1.

it narrowed the routes down to four—constructing a main north of Paris, through downtown Paris, through rural areas south of Paris, or from North Middletown.²⁶

Kentucky-American estimated the capital costs for the possible routes would be \$12,800,800 to go north of Paris,²⁷ \$12,502,750 to go through downtown Paris, \$11,742,650 to go south of Paris, and \$26,234,975 to construct a main from North Middletown.²⁸ Kentucky-American stated that it selected the route going north of Paris, because it provides as much or greater hydraulic capacity than the other routes, allows the main to be constructed primarily in state rights-of-way which reduces costs, avoids disturbing recently installed pavement and other infrastructure in downtown Paris, and is anticipated to have lower long-term maintenance.²⁹

Kentucky-American indicated that it would use ductile iron pipe for each of the alternative routes such that they would all have the same expected useful life of 80 years based on the material of the water mains.³⁰ Kentucky-American stated it considered using Polyvinyl chloride (PVC) pipe instead of ductile iron pipe but indicated that the PVC pipe would have a much shorter expected useful life of 55 years. Kentucky--American acknowledged that the PVC pipe would be initially cheaper—it indicated that PVC is \$50 per linear foot whereas ductile iron pipe is \$55 per linear foot—but asserted that the significantly shorter expected useful life for the PVC pipe would result in a higher life cycle cost for the proposed transmission main if it were constructed using PVC pipe. As such,

²⁶ Magner Direct Testimony at 7–8.

²⁷ Application at 4.

²⁸ Kentucky-American's Response to Staff's First Request, Item 2.

²⁹ Kentucky-American's Response to Staff's First Request, Item 2.

³⁰ Kentucky-American's Response to Staff's First Request, Item 2.

Kentucky-American asserted that iron ductile pipe was the more reasonable material choice.³¹

Kentucky-American stated that it will solicit competitive bids from pre-qualified contractors that meet insurance, safety, performance, and experience qualifications.³² Kentucky-American stated it would select the lowest responsive bidder from the pre-qualified contractors.³³

LEGAL STANDARD

The Commission's standard of review regarding a CPCN is well settled. No utility may construct or acquire any facility to be used in providing utility service to the public until it has obtained a CPCN from this Commission.³⁴ To obtain a CPCN, the utility must demonstrate a need for such facilities and an absence of wasteful duplication.³⁵

"Need" requires:

[A] showing of a substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed or operated.

[T]he inadequacy must be due either to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business; or to indifference, poor management, or disregard of the rights of consumers, persisting over such a period of time as to

³¹ Kentucky-American's Response to Staff's First Request, Item 6.

³² Kentucky-American's Response to Staff's First Request, Item 10.

³³ Kentucky-American's Response to Staff's First Request, Item 11.

³⁴ KRS 278.020(1). Although the statute exempts certain types of projects from the requirement to obtain a CPCN, no party has argued that the exemptions are applicable in this case.

³⁵ *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 252 S.W.2d 885 (Ky. 1952).

establish an inability or unwillingness to render adequate service.³⁶

“Wasteful duplication” is defined as “an excess of capacity over need” and “an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties.”³⁷ To demonstrate that a proposed facility does not result in wasteful duplication, the Commission has held that the applicant must demonstrate that a thorough review of all reasonable alternatives has been performed.³⁸ Although cost is a factor, selection of a proposal that ultimately costs more than an alternative does not necessarily result in wasteful duplication.³⁹ All relevant factors must be balanced.⁴⁰

DISCUSSION AND FINDINGS

Having considered the application and all evidence in the record, the Commission finds that the CPCN should be granted. Kentucky-American has established the need for the proposed water main project in that the water currently being supplied by Paris is inadequate in both quantity and quality at the current usage levels, that the limited quantity and flow have likely already caused issues with fire control, that demand is likely to increase in the future, and that the quality of water has been on ongoing issue for some

³⁶ *Kentucky Utilities Co.*, 252 S.W.2d at 890.

³⁷ *Kentucky Utilities Co.*, 252 S.W.2d at 890.

³⁸ Case No. 2005-00142, *Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky* (Ky. PSC Sept. 8, 2005), Order at 11.

³⁹ See *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 390 S.W.2d 168, 175 (Ky. 1965); see also Case No. 2005-00089, *Application of East Kentucky Power Cooperative, Inc. for a Certificate of Public Convenience and Necessity for the Construction of a 138 kV Electric Transmission Line in Rowan County, Kentucky* (Ky. PSC Aug. 19, 2005), Order at 6.

⁴⁰ Case No. 2005-00089, Aug. 19, 2005 Order at 6.

time. Thus, the Commission finds that there is a need for the proposed water main project.

Kentucky-American has also established that the proposed water main project will not result in wasteful duplication by presenting credible evidence that it selected the reasonable, least cost alternative to address the capacity and water quality issues on the Millersburg system. As outlined above, Kentucky-American had discussions with other nearby utilities, but they indicated that they did not have the capacity to supply the Millersburg system with additional water such that the construction of a new main would be required to address the need. Kentucky-American then considered a number of alternative routes and alternative materials before settling on the proposed water main project as the reasonable, least cost option.

Specifically, Kentucky-American identified a number of alternative routes, completed a hydraulic review of each, narrowed its review to four final routes and compared the construction costs, costs of acquiring easements or rights-of-ways, and public convenience associated with those routes, as well as other factors, before selecting the proposed route that runs north of Paris. As noted above, one of the alternatives considered as part of the four final routes—a main from North Middletown—had expected capital costs that were more than twice that of the proposed route such that the proposed route is highly favored from a cost perspective over that route. Further, while the other two alternatives considered as part of the four final routes—the south of Paris route and the through downtown Paris route—did have marginally lower capital costs, the hydraulic review of south of Paris route indicated that it would have significantly lower capacity than the selected route and Kentucky-American reasonably assumed that the route through

downtown Paris would have higher operation and maintenance costs such that the slightly higher capital cost of the proposed route is justified.⁴¹ Finally, Kentucky-American's selection of ductile iron pipe over PVC pipe to construct the mains was reasonable given the significantly longer expected useful life of the ductile iron pipe, which makes the ductile iron more economic despite a slightly higher cost. Thus, the Commission finds that Kentucky-American's proposed water main project will not result in wasteful duplication and that Kentucky-American's request for a CPCN for that project should be granted.

IT IS THEREFORE ORDERED that:

1. Kentucky-American is granted a CPCN to construct a water transmission main to Millersburg, Kentucky.
2. Kentucky-American shall immediately notify the Commission upon knowledge of any material changes to the projects, including, but not limited to, increase in cost and any significant delays.
3. Any material deviation from the construction approved by this Order shall be undertaken only with prior approval of the Commission.
4. Kentucky-American shall file with the Commission documentation of the total costs of the projects, including the cost of construction and all other capitalized costs, (e.g., engineering, legal, administrative, etc.) within 60 days of the date that construction authorized under this CPCN is substantially completed. Construction costs shall be classified into appropriate plant accounts in accordance with the Uniform System of Accounts for water utilities prescribed by the Commission.

⁴¹ See Kentucky-American's Response to Staff's First Request, Item 1 (in which Kentucky-American discusses why it selected the proposed project over the three other routes considered).

5. Kentucky-American 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 the substantial completion of the construction certificated herein.

6. Any documents filed in the future pursuant to ordering paragraphs 2, 4, and 5 shall reference this case number and shall be retained in the post-case correspondence file.

7. The Executive Director is delegated authority to grant reasonable extensions of time for filing any documents required by this Order upon Kentucky-American's showing of good cause for such extension.

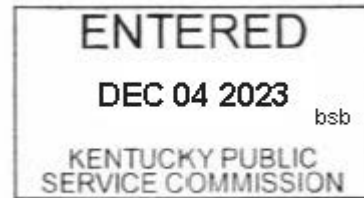
8. This case is closed and removed from the Commission's docket.

PUBLIC SERVICE COMMISSION


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Vice Chairman


Commissioner



ATTEST:


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