

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE VERIFIED JOINT APPLICATION OF)
BOONESBORO WATER ASSOCIATION, INC.)
AND KENTUCKY-AMERICAN WATER)
COMPANY FOR APPROVAL OF THE) CASE NO. 97-320
TRANSFER OF THE OWNERSHIP OF THE)
ASSETS OF BOONESBORO WATER)
ASSOCIATION, INC. TO)
KENTUCKY-AMERICAN WATER COMPANY)

O R D E R

Kentucky-American Water Company ("Kentucky-American") and Boonesboro Water Association, Inc. ("Boonesboro") have jointly applied for Commission approval of the transfer of ownership of Boonesboro's assets to Kentucky-American. Finding that Kentucky-American has the financial, technical, and managerial abilities to provide reasonable service and that the proposed transfer is in accordance with law, for a proper purpose and consistent with the public interest, we grant the application and approve the proposed transfer.

On July 18, 1997, Kentucky-American and Boonesboro jointly applied for Commission approval of the transfer of Boonesboro's assets. Winchester Municipal Utilities ("WMU") and the Attorney General ("AG") subsequently intervened in this proceeding. After extensive discovery was conducted, the Commission held a public

hearing on the application on September 22, 1997.¹ After the submission of written briefs by all parties, this matter stood submitted for a decision.

FINDINGS OF FACT

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that:

Boonesboro Water Association

1. Boonesboro is a non-profit corporation which was incorporated on March 22, 1968 pursuant to KRS Chapter 273.
2. Boonesboro owns and operates facilities in Clark County, Kentucky which are used for and in connection with the distribution and furnishing of water to the public for compensation and with the treatment of sewage to the public for compensation.
3. As of December 31, 1996, Boonesboro provided retail water service to approximately 1,151 customers and sanitary sewer service to 68 customers in the Rockwell subdivision of Clark County, Kentucky.
4. During calendar year 1996, Boonesboro sold 116,273,600 gallons of water and had \$420,443 in revenue from water sales.
5. As of December 31, 1996, Boonesboro had total water utility plant of \$744,025.

¹ The following persons testified: Roy W. Mundy (Vice President and Manager, Kentucky-American Water Company); Linda C. Bridwell, (Engineering Manager, Kentucky-American Water Company); Coleman D. Bush (Assistant Treasurer and Business Manager, Kentucky-American Water Company); Harold A. Adams, President, Boonesboro); and Myra S. Meetze (Administrative Assistant, Boonesboro). All witnesses appeared on behalf of the Joint Applicants.

6. As of December 31, 1996, Boonesboro's water distribution system had total assets and debits of \$940,773 and total liabilities of \$429,617.

7. Boonesboro owns the following water distribution facilities: a 118,980 gallon water storage standpipe, a 105,760 gallon water storage standpipe, 5 miles of 8-inch main, 30 miles of 6-inch main, 21.5 miles of 4-inch main, 18 miles of 3-inch main, 2.3 miles of 2.5-inch, .6 miles of 2-inch main, .7 miles of 1-inch main, and two electric pumping stations.

8. Boonesboro's distribution system is not an integrated system but rather four separate distribution systems which are connected to WMU through master meters.

9. Boonesboro does not own any water treatment facilities but purchases its total water requirements from WMU.

10. On October 13, 1981, Boonesboro and WMU executed a 20-year Water Purchase Agreement. Under the terms of this agreement, WMU is designated Boonesboro's exclusive water supplier and must supply a maximum of 8 percent of its rated treatment capacity to Boonesboro. Boonesboro has the right to renew and extend the Water Purchase Agreement for an additional period of 20 years upon written notice to WMU of its intention to do so at least 60 days prior to the expiration of the first term.

11. The rated capacity of WMU's water treatment facilities is 5.5 million gallons per day ("MGD").

12. Based upon its present treatment capacity, WMU is required to provide Boonesboro no more than 440,000 gallons per day ("GPD").

13. Boonesboro's highest average day demand during the last 5 years occurred in 1995 and was 406,718 GPD.

14. Boonesboro's maximum peak day demand during the last 5 years occurred in 1995 and was 592,052 GPD.

15. On December 19, 1995, Boonesboro brought suit against WMU in U.S. District Court for the Eastern District of Kentucky. In its complaint, Boonesboro alleged that WMU is encroaching upon its service territory in violation of 7 U.S.C. §1926(b) and is compromising Boonesboro's ability to repay its debt obligations to the United States. Boonesboro subsequently amended its complaint to further allege that WMU has violated the Water Purchase Agreement by demanding that Boonesboro not add any new customers.

16. On February 9, 1996, WMU notified Boonesboro that Boonesboro's consumption exceeded the maximum level set forth in the 1981 Water Purchase Agreement and that WMU's water treatment plant was nearing its capacity, and requested that Boonesboro not add any new customers to its system.

17. On June 13, 1996, WMU's legal counsel advised Boonesboro in writing that WMU would take legal action if Boonesboro did not cease adding customers.

18. On February 14, 1997, WMU proposed to initiate negotiations with Boonesboro for the acquisition of Boonesboro's water and sewer facilities. Boonesboro did not respond to the proposal. WMU has not made any further proposals to Boonesboro regarding acquisition of its facilities.

19. As of this date, WMU has not initiated any legal action against Boonesboro to restrict Boonesboro's water purchases to 440,000 GPD or to restrain Boonesboro from adding additional customers nor has it taken any other actions to limit Boonesboro's supply.

20. Boonesboro owns the following sewage treatment facilities: a 40,000 GPD aeration treatment plant, an electric pumping station, and 2,500 feet of 8-inch clay sewer main.

21. As of December 31, 1996, Boonesboro had total sewer utility plant of \$24,189.

22. As of December 31, 1996, Boonesboro's sewer system had total assets and debits of \$60,459 and total liabilities of \$624.

23. The Kentucky Natural Resources and Environmental Protection Cabinet has directed that Boonesboro cease the operation of its sewage treatment plant and connect its sewage mains to those of WMU. WMU has agreed to accept sewage from Boonesboro upon the cessation of this plant's operation. Boonesboro expects connection of the two systems' sewer mains to occur in 1998.

Kentucky-American Water Company

24. Kentucky-American is a corporation organized pursuant to the laws of Kentucky.

25. Kentucky-American owns and operates facilities used for and in connection with the distribution and furnishing of water to the public for compensation.

26. Kentucky-American has been in continuous operation as a distributor of water since 1882.

27. Kentucky-American is a wholly-owned subsidiary of American Water Works Company, Inc. ("AWC"). AWC owns 22 subsidiary companies which provide water service to approximately 7 million people in more than 800 communities in 21 states. AWC's affiliates operate 1,073 wastewater treatment plants in the United Kingdom and 176 wastewater treatment plants in the United States.

28. As of December 31, 1996, Kentucky-American provided retail water service to 87,403 customers in Fayette, Scott, Bourbon, Harrison and Woodford counties and wholesale service to 5 municipal or public water utilities.

29. During calendar year 1996, Kentucky-American sold 12,517,886,000 gallons of water and had \$32,233,402 in revenue from water sales.

30. As of December 31, 1996, Kentucky-American had total utility plant of \$155,935,378.

31. As of December 31, 1996, Kentucky-American had total assets and debits of \$170,509,746 and total liabilities of \$117,931,031.

32. As of December 31, 1996, Kentucky-American employed 148 persons, 33 of whom were certified Class-IV water treatment operators.

33. Kentucky-American does not currently employ a certified wastewater treatment plant operator.

34. Kentucky-American owns and operates its own certified laboratories and performs extensive in-house testing. It also has access to AWC's Quality Control and Research Laboratory at Belleville, Illinois.

35. Kentucky-American has a maximum rated water treatment production capacity of 65 MGD.

36. Kentucky-American's highest average day demand during the last 5 years occurred in 1995 and was 39.86 MGD.

37. Kentucky-American's maximum peak day demand during the last 5 years occurred in 1995 and was 63.77 MGD.

38. Kentucky-American currently obtains its entire water supply from the Kentucky River Basin and is authorized to withdraw a maximum of 60 MGD.

39. During the last 5 years, Kentucky-American has experienced an average annual growth in customers of 2.24 percent or approximately 1781 customers.

40. Kentucky-American currently has a treatment capacity deficit of 5.99 MGD based on a 95 percent exceedance level of its projected maximum day demands. This treatment capacity deficit is projected to increase to 21.28 MGD under a hot, dry scenario.

41. The Commission has ordered Kentucky-American to take the necessary and appropriate measures to obtain sources of supply so that the quantity and quality of water delivered to its distribution system shall be sufficient to adequately, dependably, and safely supply the total reasonable requirements of its customers under maximum consumption through the year 2020.

42. Kentucky-American presently plans to address its treatment capacity deficit by purchasing water from the Louisville Water Company and has proposed the construction of a water pipeline which will connect its distribution system with the Louisville Water Company. As of the date of this Order, Kentucky-American has not applied to the Commission for a Certificate of Public Convenience and Necessity to construct such a pipeline.

43. Kentucky-American's distribution and transmission system is not currently connected to either Boonesboro or WMU's distribution system.

Proposed Transaction And Its Aftermath

44. On June 18, 1997, Kentucky-American and Boonesboro executed an Asset Purchase Agreement. This Agreement provides that:

a. Kentucky-American will purchase, free and clear of any liens, claims, and encumbrances, all Boonesboro assets that are used to provide utility service. The purchase price is \$499,190.

b. Upon completion of the purchase, Kentucky-American will own and operate Boonesboro's water distribution system and will serve Boonesboro's customers as its own customers. Kentucky-American will charge Boonesboro customers the same rates and charges which it charges its other customers.

c. Upon completion of the purchase, Kentucky-American will assume Boonesboro's obligation under its 1981 Water Purchase Agreement with WMU.

d. Kentucky-American will retain certain Boonesboro employees.

e. The Agreement is expressly conditioned upon Commission approval.

45. Boonesboro's board of directors has approved the Asset Purchase Agreement.

46. Boonesboro's board of directors did not submit the Asset Purchase Agreement to its members for a vote.

47. Boonesboro notified its customers by mail of the proposed transfer. No customers have complained to Boonesboro about the proposed transfer nor have any customers intervened in this proceeding in opposition to the proposed transfer.

48. Upon completion of the proposed transfer, Kentucky-American will retain three Boonesboro employees including the certified wastewater treatment operator who currently operates and maintains Boonesboro's sewage treatment facilities. These employees will assume existing positions which are currently vacant. Their retention will not increase Kentucky-American's expenses.

49. Within one year of completion of the proposed transfer, Kentucky-American will close and sell Boonesboro's present office building. Kentucky-American intends to make arrangements to permit Boonesboro's customers to make their payments for water service to local merchants.

50. Upon completion of the proposed transfer, Kentucky-American will record a Utility Plant Acquisition Adjustment of \$35,812.

51. Upon completion of the proposed transfer, Kentucky-American will continue to purchase Boonesboro customers' total water requirements from WMU for the remaining term of the 1981 Water Purchase Agreement.

52. Kentucky-American has no current plan to physically connect its distribution system to Boonesboro's distribution system before the expiration of the 1981 Water Purchase Agreement.

53. The estimated cost of connecting Kentucky-American's distribution system to Boonesboro's distribution system is \$1,259,400. Estimated time to construct the facilities to connect the distribution systems is 6 months. If upon completion of the connection Kentucky-American discontinues water purchases from WMU, the cost of such connection will be revenue neutral and not affect the rates of Kentucky-American's customers.

54. Upon the completion of the proposed transfer and the provision of service to Boonesboro's customers at Kentucky-American's existing rates, the average Boonesboro residential customer's bill for water service would be reduced from \$22.89 per month to \$19.89.

55. Upon completion of the proposed transfer, the rates and quality of water service provided to present Boonesboro customers will continue to be subject to Commission jurisdiction.

56. The proposed transfer will reduce the operating expenses to provide water service to Boonesboro's present members by approximately \$127,595.

57. The proposed transfer is likely to improve the quality of water service presently provided to Boonesboro's customers.

58. The proposed transfer is unlikely to affect the rates of current Kentucky-American customers.

59. Kentucky-American's acquisition of Boonesboro will not significantly affect its treatment capacity deficit.

60. The proposed transfer is unlikely to affect the quality of service of current Kentucky-American customers.

CONCLUSIONS OF LAW

Based upon the findings set forth above, the Commission makes the following conclusions of law:

1. Kentucky-American is a public utility subject to the jurisdiction of this Commission. KRS 278.010(3)(d); KRS 278.040(1).

2. Boonesboro is a public utility subject to the jurisdiction of this Commission. KRS 278.010(3)(d) and (f); KRS 278.040(1).

3. Kentucky American's acquisition of Boonesboro's assets results in the transfer of ownership and control of Boonesboro and requires Commission approval. KRS 278.020(4) and (5).

4. Neither Boonesboro's corporate by-laws nor its articles of incorporation entitled Boonesboro's members to vote on the Asset Purchase Agreement. The sale of Boonesboro's assets could be authorized through a vote of the majority of its board of directors. See KRS 273.297.

5. Kentucky-American has the financial, technical, and managerial abilities to provide reasonable utility service.

6. The proposed sale of Boonesboro's assets is in accordance with law, for a proper purpose, and consistent with the public interest.

7. The reasonableness of any utility plant acquisition adjustment which Kentucky-American may record as a result of the Asset Purchase Agreement or of any acquisition costs which Kentucky-American incurs as a result of the proposed transaction is not relevant to these proceedings and should be deferred to Kentucky-American's next general rate adjustment proceeding. See Bluegrass Telephone Co. v. Pub. Serv. Comm'n, Ky., 382 S.W.2d 81 (1964).

CONCLUSION

IT IS HEREBY ORDERED that:

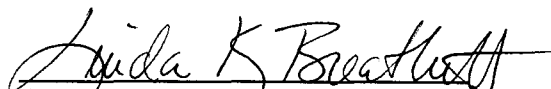
1. The proposed transfer of ownership and control of Boonesboro's assets to Kentucky-American is approved.
2. Upon completion of the proposed transfer, Kentucky-American shall apply the same rates, rules, classifications and regulations for water service to current Boonesboro customers which it applies to its present customers.
3. Within 10 days of completion of the proposed transfer, Kentucky-American shall file an adoption notice adopting Boonesboro's present rates, rules, classifications and regulations for sewer service.
4. Within 20 days of the completion of the proposed transfer, Kentucky-American shall file revised tariff sheets which reflect all changes resulting from its acquisition of Boonesboro's assets and customers.
5. Within 20 days of completion of the proposed transfer, Boonesboro shall refund all customer deposits which it presently holds.

8. With its next application for general rate adjustment, Kentucky-American shall submit a cost-of-service study which specifically considers the unique circumstances of its provision of water service to Boonesboro's customers.

9. Kentucky-American in its next application for general rate adjustment shall be prepared to address the reasonableness of any utility plant acquisition adjustment which results from the Asset Purchase Agreement and of any costs incurred to acquire Boonesboro's assets.

Done at Frankfort, Kentucky, this 16th day of October, 1997.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director