

Public Service Commission  
Of West Virginia

201 Brooks Street, P. O. Box 812  
Charleston, West Virginia 25323



Phone: (304) 340-0300  
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April 28, 2009

Stephen N. Chambers, Esq.  
Counsel, West Virginia-American Water Company and  
Boone County Public Service District  
Jackson Kelly PLLC  
PO Box 553  
Charleston, WV 25322

RE: Case No. 09-0415-W-PWD-PC  
West Virginia-American Water Company and  
Boone County Public Service District

Dear Mr. Chambers:

Pursuant to Rule 2 of the Commission's Rules of Practice and Procedure, we are enclosing a copy of the Staff memorandum in this matter. If you wish to respond to the enclosed Staff memorandum, you may do so in writing, **within 10 days**, unless directed otherwise, of this date.

Your failure to respond in writing to the utility's answer, Staff's recommendations, or other documents may result in a decision in your case based on your original filing and the other documents in the case file, without further hearing or notice.

You have the ability to view documents as they are filed in this case if you have email. Please visit our web site at [www.psc.state.wv.us](http://www.psc.state.wv.us) and register with our email subscription system to receive customized daily activity information in this case. The public will not be given access to your email address. If you have provided an email address you will automatically receive docket notifications as documents are filed.

Sincerely,

A handwritten signature in black ink, appearing to read "Sandra Squire".

Sandra Squire, Director  
Executive Secretary Division

SS/cg  
Enc.

**INITIAL AND FINAL JOINT STAFF MEMORANDUM**

**TO: SANDRA SQUIRE**  
Executive Secretary

**DATE: April 28, 2009**

**FROM: LESLIE J. ANDERSON** *LJA*  
Staff Attorney

**RE: 09-0415-W-PWD-PC**  
**WEST VIRGINIA-AMERICAN WATER COMPANY and BOONE**  
**COUNTY PUBLIC SERVICE DISTRICT**

**RECEIVED**  
2009 APR 28 P 2:52  
WVA PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

On March 24, 2009, West Virginia-American Water Company (WVAWC or Company) and the Boone County Public Service District (BCPSD) (jointly Petitioners) filed a petition for determining whether a proposed line extension project constitutes an ordinary extension of an existing system in the usual course of business, and thus, does not require a certificate of convenience and necessity. In the alternative, if a certificate of convenience and necessity is needed for the project, then the Petitioners requested that one be issued to the BCPSD. The Petitioners noted that no 30-day pre-filing notice is required for this project pursuant to W. Va. Code §24-2-11(c) since the Project has been approved by the West Virginia Infrastructure and Jobs Development Council (was assigned Project # 2008W-1045). The Petitioners requested expedited review.

As background, currently WVAWC provides water service to customers in Boone County pursuant to an O&M Agreement which was approved by the Commission in an order entered on October 17, 1997, in *West Virginia-American Water Company*, Case No. 96-1338-PWD-CN. This water service is supplied by the Kanawha Valley Water Treatment Plant (Plant) which has a capacity of 50 million gallons per day (MGD) and has the ability to increase capacity to 80 MGD. The Plant uses water from the Elk River. Pursuant to the O&M Agreement between the PBPSD and WVAWC, WVAWC has agreed, among other things to: "(I) purchase from BCPSD, or design, purchase, install, and own the Facilities listed on Exhibit B of the O&M Agreement [a copy of which is attached to the petition as Exhibit C.7]; (ii) provide water to various areas of Boone County; (iii) operate, maintain, repair, and replace the Facilities; and (iv) read all meters of the customers of BCPSD and, as agent for and on behalf of BCPSD, bill BCPSD's customers at rates that mirror the rates of the Company." (petition at p. 3, footnote and citation omitted).

The Project at issue involves extending an existing water line to the Prenter Road/Route 5 area south of Seth in Boone County and consists of 32,000 feet of 8-inch, 6-inch, and 2-inch diameter line. The Project will extend domestic water and public fire service to approximately 140 Boone County residents who live "in the northern area of

Prenter Road/Route 5, including areas along Sand Lick Road, Laurel Creek Road, Hurricane Branch Road, and Three Fork Branch[.]” (Petition at p. 3). The Petitioners will include in the bidding of the Project an additional extension known as the “additive alternative” (Additive Alternate No. 1) which involves extending service to the community of Nelson which is located further south along Prenter Road/Route 5. The additive alternative consists of 8,000 feet of 8-inch and 2-inch diameter water lines, and will extend service to approximately 20 Boone County residents. There is a second additive alternative (Additive Alternate No. 2) which would extend service to approximately 3 more Boone County residents and which would consist of approximately 1,300 feet of 6-inch and 2-inch diameter water lines. If the bids for the main Project are sufficiently below estimated and/or if additional funds become available, then the Petitioners will construct Additive Alternative Nos. 1 and 2. The Petitioners stated that the “Plant has adequate hydraulic and treatment capacities to supply the current and estimated future needs of the customers of both the Company and of BCPSD.” (petition at p. 4).

The Project is estimated to cost \$2,237,500 and will be funded as follows:

Boone County Commission Grant	\$ 300,000
WVAWC contribution	\$ 437,500
Housing and Urban Development Small <u>Cities Block Grant</u>	<u>\$1,500,000</u>
Total	\$2,237,500

The Petitioners explained that since only \$200,000 of the Small Cities Block Grant is immediately available and the remaining \$1,300,000 should be available by the end of the fiscal year ending July 2009, the Boone County Commission has agreed to advance its \$300,000 commitment and, if needed, make available an additional \$1,300,000 toward the Project with the understanding that once the remaining Small Cities Block Grant becomes available the expended funds will be returned to the Boone County Commission, interest free. The Petitioners asserted that the Project will have no effect on their current rates and that no rate change is being sought in this proceeding. Thus, the Applicants request a waiver of the Rule 42 filing requirements.

The Petitioners explained that the Project design was finalized in March 2009 and that bids are tentatively scheduled to be published in June 2009 subject to the Commission’s decision in this proceeding. The Petitioners anticipate construction contracts being awarded by August 2009 so that Project construction can be completed by April 2010.

The Petitioners analyzed the need for a certificate for this Project pursuant to W. Va. Code §24-2-11 and the Commission's General Order No. 246 which was entered on February 24, 1993. The Petitioners asserted that the Project does not require a certificate of convenience and necessity as it is an ordinary of an existing system in the usual course of business for the following reasons:

- (1) The Petitioners asserted that the Project's estimated cost of approximately \$2.24 million is not large in comparison to WVAWC's annual revenues of \$105,636,422 (its equals about 2.1% of WVAWC's annual revenues). The Petitioners further asserted that it was appropriate to use WVAWC's annual revenues and not the BCPSD's annual revenues even though the Project will be owned by the BCPSD and even though the customers served by the Project are BCPSD customers because under the terms of the O&M Agreement WVAWC will retain the revenues and the facilities that will be constructed as part of the Project will be ultimately operated and maintained by WVAWC in a manner indistinguishable from WVAWC-owned facilities to which they are connected.
- (2) The 140 new customers to be served by the Project is not large compared to WVAWC's total residential customers as the new customers from the Project represent less than 0.1% of WVAWC's 154,407 residential customers.
- (3) The total length of the extension, approximately 41,000 linear feet including Additive Alternative Nos. 1 and 2, represents only approximately 0.61% of the 6,729,605 total linear feet of the Company's water system.
- (4) The design of the Project is a routine line extension with twenty fire hydrants and is similar to numerous routine extensions of the Company's system made under Rule 5.5. of the Commission's *Water Rules*. Additionally, the engineer design cost of the Project, which was \$100,000, represents only 4.5% of the total Project cost. Furthermore, WVAWC's engineering staff and the engineering consultant, Potesta & Associates, Inc., are very competent and very experienced in such Projects.
- (5) The Project does not require any debt financing. Thus, there will be no surcharge and only a minor increase in operation and maintenance costs associated with the Project which will be mostly if not totally offset by the revenues generated from the new customers.

***Water and Wastewater and Engineering Division's Initial and Final Recommendation***

In the attached Initial and Final Memorandum received by the Legal Division on April 28, 2009, Nathan Nelson, Utilities Analyst II, and John Mottesheard, Engineering Technician, expressed their opinion that the project is an ordinary extension of existing systems in the usual course of business for the following reasons:

1. WVAWC plans to install approximately 41,000 linear feet of pipe. In comparison to WVAWC's 6,729,605 linear feet of distribution mains, the proposed extension is only 0.61% of its current distribution system.
2. The total project cost of \$2,237,500 represents just 1.94% of the Company's annual revenues of \$115,510,635.
3. The project is entirely grant funded.
4. The project does not require any substantial engineering design. Project design consists of a routine line extension and 20 fire hydrants.

Attached memorandum at p. 2. Thus, Mr. Nelson and Mr. Mottesheard recommended that the Commission conclude that a certificate of convenience and necessity is not needed for this project.

***Legal Division's Initial and Final Recommendation***

At the outset, W. Va. Code § 24-2-11 states, in relevant part:

No public utility, person or corporation shall begin the construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in . . . [§24-2-1] . . ., nor apply for, nor obtain any franchise, license or permit from any municipality or other governmental agency, **except ordinary extensions of existing systems in the usual course of business**, unless and until it shall obtain from the Public Service Commission a certificate of public convenience

and necessity authorizing such construction franchise, license or permit.

(emphasis added). When discussing the language “ordinary extensions of existing systems in the usual course of business” found in W. Va. Code § 24-2-11 (the general certificate statute), the Commission stated that “[a]ll entities, including public utilities, should consult with Commission’s Staff on whether a construction project that will provide service to the public requires a certificate, on a case-by-case basis.” General Order No. 246, Commission order, February 24, 1993, p. 3. An Administrative Law Judge has noted:

The Code provision does not define or elaborate as to what constitutes an ‘ordinary extension’ of an existing system, although it has been construed to mean that construction activities which deal with the in-kind replacement of existing facilities are not subject to the certification process. Historically, Commission Staff has looked at various factors, any of which are subjective, in order to make a determination regarding the need for a certificate. These factors include, but are not limited to, the following: (a) the estimated cost of the project as compared with the annual revenues of the applicant; (b) the level of complexity (engineering or otherwise) of the proposed project; (c) the type of funding proposed for the project; (d) the factors driving the project; (e) the urgency of the project; (f) the experience and competency of the applicant’s staff and/or professional consultants; (g) the regulatory history of the applicant; and (h) the potential benefits and risks of the project.

South Putnam Public Service District, Case No. 04-0034-PWD-PC, Recommended Decision, entered March 17, 2004, final April 6, 2004, p. 4.

As explained above, by Mr. Nelson and Mr. Mottesheard, this project is an ordinary extension in the ordinary course of business for the utilities involved. Thus, the Legal Division recommends that an order be issued which finds that the proposed project is an ordinary extension within the ordinary course of business. Staff further recommends that the Commission conclude that the Applicants do not need to obtain a certificate of

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April 28, 2009

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convenience and necessity for this project.<sup>1</sup>

LJA/s

Attachment

CWS *CWS*

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<sup>1</sup>The Staff Attorney notes that the Commission has no authority to “waive” a statutory requirement such as the requirement that utilities obtain certificates of convenience and necessity found in W.Va. Code §24-2-11. Thus, if the Commission concludes a project is not an ordinary extension within the ordinary course of business, then the utility and the Commission must ensure that the mandates of W. Va. Code § 24-2-11 are met.

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA

INITIAL AND FINAL INTERNAL MEMORANDUM

DATE: April 28, 2009

TO: Leslie Anderson, Staff Attorney  
Legal Division

FROM: Nathan Nelson, Utilities Analyst II *NTN*  
Water and Wastewater Division

John Mottesheard, Engineering Technician *Jm*  
Engineering Division

SUBJECT: Case No. 09-0415-W-PWD-PC  
West Virginia American Water Company  
& Boone County Public Service District

RECEIVED  
09 APR 28 PM 1:44  
WV PUBLIC SERVICE COM.  
LEGAL DIVISION

On March 23, 2009, the West Virginia-American Water Company (WVAWC) and the Boone County Public Service District (District) filed a petition for consent and approval that a proposed main extension project does not require a Certificate of Convenience and Necessity, or alternatively, for issuance of a Certificate of Convenience and Necessity on an expedited basis.

The applicants propose to construct approximately 41,000 feet of 8-inch, 6-inch and 2-inch diameter water line to extend water service to 140 customers in the northern area of Prenter Road/Route 5 in Boone County. The applicants propose two other additive alternatives should funds remain upon completion of the main extension.

The project is estimated to cost \$2,237,500. Project funding will be entirely through grant funds consisting of a Boone County Commission grant of \$300,000, a WVAWC contribution of \$437,500 and a Small Cities Block Grant of \$1,500,000. Commitment letters have been filed in this case. There will be no rate increase associated with the project. The District's rates and charges mirror those of WVAWC.

West Virginia Code 16-13A-11(a) states that no public utility, person or corporation shall begin the construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in

West Virginia Code 24-2-1, except ordinary extensions of existing systems in the usual course of business, unless and until it shall obtain from the Public Service Commission a Certificate of Convenience and Necessity.

Based upon WVAWC's Annual Report for the year ended December 31, 2008, and recent case decisions reviewed in formulating the final recommendation of Staff, Staff is of the opinion that this project is an ordinary extension of existing systems in the usual course of business for the following reasons:

1. WVAWC plans to install approximately 41,000 linear feet of pipe. In comparison to WVAWC's 6,729,605 linear feet of distribution mains, the proposed extension is only 0.61% of its current distribution system.
2. The total project cost of \$2,237,500 represents just 1.94% of the Company's annual revenues of \$115,510,635.
3. The project is entirely grant funded.
4. The project does not require any substantial engineering design. Project design consists of a routine line extension and 20 fire hydrants.

Therefore, it is the opinion of Staff that a Certificate of Convenience and Necessity is not required since the project should be considered an ordinary extension of the existing system in the usual course of business. Staff recommends that the Commission retain this case.

JM:NN:vt

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