

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the matter of:

AN ADJUSTMENT OF THE GAS AND)
ELECTRIC RATES, TERMS, AND CONDITIONS) CASE NO.
OF LOUISVILLE GAS AND ELECTRIC) 2003-00433
COMPANY

AND

AN ADJUSTMENT OF THE ELECTRIC RATES,) CASE NO.
TERMS, AND CONDITIONS OF KENTUCKY) 2003-00434
UTILITIES COMPANY)

PROPOSED SUBMISSION OF STATUS REPORT AND
MOTION TO HOLD PROCEEDING IN ABEYANCE

Comes the Commonwealth of Kentucky, *ex rel.* Attorney General Gregory D. Stumbo, by counsel and moves the Commission to hold the instant rate cases in abeyance pending the completion of the Attorney General's investigation of *ex parte* contacts between members of the Commission and its staff and agents of the Applicants for rate increase, Louisville Gas & Electric Company and Kentucky Utilities Company (hereinafter referred to as "LG&E" and "KU"). The Attorney General proposes that a status report on the investigation be filed with the Commission no later than September 30, 2004.

As the Commission is aware, the Attorney General has initiated an investigation to determine whether improper *ex parte* contacts between the Commission and agents of regulated utilities, including but not limited to LG&E and KU, have occurred in violation of the Consumer Protection Act KRS 367.110 *et seq.* In furtherance of that investigation, the Attorney General

has served civil subpoenas and investigative demands upon representatives of the Commission, including the sitting Commissioners in this case, compelling the production of documents and testimony under oath. Subpoenas have been served on other parties including LG&E and KU. After receiving the subpoenas, the Commission, on behalf of the employees receiving the subpoenas and LG & E and KU, filed separate actions in Franklin Circuit Court seeking to quash the subpoenas and prevent the Attorney General from proceeding, on the ground that the Attorney General “grossly misconstrued” his authority. The Attorney General responded and set forth voluminous caselaw and facts supporting the propriety of the investigation. See: Attorney General’s Response to Motions to Set Aside and Quash and for Temporary Injunction, appended hereto as *Exhibit A*.

Following a hearing on the matter, the Franklin Circuit Court denied the Commission’s and LG & E’s Petitions and found that the Attorney General’s investigation was lawful and should proceed, with the full cooperation of the PSC. In its Order, the Court stated:

The Attorney General has broad authority in consumer protection matters ranging from enforcement of the Commonwealth’s law against deceptive business practices (KRS 367.170) to studying rules, orders and state policies affecting consumers. KRS 367.150. The PSC, as a state agency, is required to cooperate with the Attorney General in carrying out these functions. KRS 367.160(1).

Order Consolidating Actions and Overruling Plaintiffs’ Requests to Quash Subpoena and for Temporary Injunction of July 27, 2004. A copy of the Order is attached hereto as *Exhibit B*.

On the very day that the Franklin Circuit Court found the Attorney General’s investigation proper and required the PSC to cooperate, the PSC reopened the rate cases “based on the allegations by the Attorney General’s Office.” See: PSC Order of July 15, 2004. The express purpose of this reopening was to provide “all parties . . . an opportunity to engage in

discovery, including the issuance of subpoenas. . . .” Id. The PSC then ordered a conference “for the purpose of establishing a procedural schedule for conducting discovery, filing testimony, and conducting an evidentiary hearing” on matters within the Attorney General’s own investigation. See: PSC Order of July 22, 2004. The PSC later stated that it intends to “allow the parties to address the allegations raised by the Attorney General”, despite the fact that the Attorney General’s investigation has only recently begun. See: PSC Order of July 26, 2004.

Obviously, the PSC fundamentally misunderstands the nature of the investigatory process authorized by the Consumer Protection Act and approved by the Franklin Circuit Court. The investigation is not an adversarial process. It is a fact gathering endeavor which may result in later enforcement proceedings. As an example of the matters to be examined in conducting the investigation, a list of telephone calls from PSC employees to LG & E employees is appended hereto as *Exhibit C*. This list is a representative sampling of data obtained under the Open Records Act, and illustrates the depth of the inquiry presently being conducted by the Attorney General. Clearly, a reasonable amount of time will be required to assess this data. For this reason, the PSC should hold its proceedings in abeyance until the Attorney General files its status report regarding the investigation. The tentative date for such filing is September 30, 2004. If the Attorney General’s investigation reveals improper actions, the affected parties will be afforded the opportunity to defend themselves.

The Attorney General’s investigation is extensive and is ongoing and is **confidential** pursuant to KRS 367.250 which provides:

To accomplish the objectives and to carry out the duties prescribed by KRS 367.110 to 367.300, the Attorney General, in addition to other powers conferred upon him by KRS 367.110 to 367.30, may issue subpoenas to any person, administer an oath or affirmation to any person, or conduct hearings in aid of any

investigation or inquiry, provided that information obtained pursuant to the powers conferred by KRS 367.110 to 367.300 shall not be made public or disclosed by the Attorney General or his employees beyond the extent necessary for law enforcement purposes in the public interest.

At such time as the Attorney General's Consumer Protection Division has completed its investigation, the results of the investigation may be made public in accordance with the requirements of KRS 367.250 and may be introduced as evidence in an ongoing rate case. The Attorney General submits that the Commission has the authority, under KRS 278.310 and 807 KAR 5:001 Sec. 3 to continue this rate hearing until the investigation is complete. The Attorney General's ability to conduct the investigation would be severely hampered and the public interest impaired if the Commission attempted to require the Attorney General to go forward and present evidence prior to the completion of the investigation.

In addition, given the focus of the investigation - improper *ex parte* contacts between regulated utilities and the Commission- it is not reasonable for the Commission to dictate the terms of the investigation in this matter. This is particularly the case when there is a substantiated history of *ex parte* contacts between the Commission and LG & E, such *ex parte* contacts resulting in the seminal case in Kentucky on this issue, *LG & E v. Commonwealth ex rel Cowan*, Ky. App., 862 S.W.2d 897 (1993). *Cowan* specifically rejects the idea that "ex parte contacts in Kentucky are, or should be, the 'bread and butter' of administrative proceedings to be tolerated with a knowing wink." *Id.* at 901. *See Appeal of Public Service Company of New Hampshire*, 454 A.2d 435, 442 (N.H. 1982) (stating "Due process requires members of the PUC to refrain from ex parte communications if such an agency is not only to be, but also appear to be, impartial.")

Moreover, the PSC should not dictate the terms of the Attorney General's investigation

because the investigatory guidelines for the PSC are antithetical to the broad investigatory powers given to the Attorney General pursuant to the Consumer Protection Act. Under 807 KAR 5:001, it is the Commission that decides whether to issue subpoenas, not the Attorney General. Under 807 KAR 5:001 witnesses subpoenaed to testify would arguably be required to testify in the presence of all other parties. However, under the Consumer Protection Act, KRS 367.250, such testimony is taken before the Attorney General only and is confidential.

The Attorney General's investigation must go forward in the manner determined by the Attorney General to be the most effective and productive and according to the requirements of KRS 367. The Franklin Circuit Court found that the Attorney General had shown a sufficient basis to proceed with the investigation, and the Court made this finding based upon matters of public record submitted to the Court. These open records, which any member of the public can request and examine, show a disturbing number of telephone contacts between upper level management of the PSC and representatives of LG & E and KU. A representative sample of these telephone contacts is attached hereto as *Exhibit C*. Telephone contacts very similar to those delineated in *Exhibit C* were sufficient to require recusal of a commissioner in a recent case from Illinois. *See Business and Professional People for the Public Trust v. Barnich*, 614 N.E.2d 341 (Ill. App. 1993) (holding that a commissioner of the Illinois Commerce Commission had a duty to recuse himself after his impartiality had been reasonable questioned due to a large number of *ex parte* phone calls with representatives of an electric company that was involved in a ratemaking proceeding); The PSC should not attempt to dictate the manner in which this investigation must proceed.

Likewise, LG&E and KU customers should not be prejudiced by the Orders of the PSC in

this regard. The rate case should stay open until the investigation is complete. Any efforts by the PSC to artificially restrict or curtail the investigation jeopardizes the ability of the Commission to affect the utility rates thereafter due to limitations on a reviewing court's jurisdiction contained in KRS 278.440. If the rate hearing is closed prior to the conclusion of the Attorney General's investigation, regardless of any evidence the investigation may produce, LG&E would undoubtedly argue that such evidence could not be used to challenge the rates approved by the Commission and could not be considered by a reviewing Court. Although the Attorney General would argue that the evidence could be considered, due to the lack of precedent in this area, there is a not insignificant risk that such evidence would be excluded and an unreasonable rate be kept in place simply because the Commission closed the hearing prematurely. *See Minn. Public Utilities Commission's Initiation of Summary Investigation v. Northwestern Bell Telephone*, 417 N.W.2d 274 (Minn. Ct. App. 1987) (holding that the Minnesota Public Service Commission could vacate a rate order due to *ex parte* contacts that constituted a "fraud on the Commission"); *but see City of Cincinnati v. Public Utilities Commission*, 595 N.E.2d 858 (Ohio 1992) (holding that *ex parte* contacts by commission chairman did not warrant vacation of order in ratemaking proceeding).

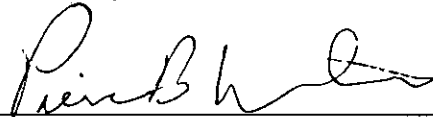
LG&E will not be prejudiced if the hearing is held in abeyance. The rates announced by LG&E have already gone into effect. Under KRS 278.190 they may be recovered if the Commission later determines that they are unreasonable or erroneous. The equities in this case clearly weigh in favor of holding the proceedings in abeyance until the Attorney General's investigation is complete.

The Public Service Commission's duty is to protect the public interest. It cannot protect

the public interest by short circuiting a process which involves an investigation of improper ex parte contacts by the Commission itself. As stated above, because of the negligible impact on LG&E which is already collecting higher rates the Commission's June 30 Order approved there will be no prejudice to LG&E if the proceeding is delayed. The Public Service Commission's integrity is at issue in this investigation. Any effort by the Commission to curtail, control or limit the Attorney General's investigation to assure that the public's interest is being protected is contrary to the duty of the Commission to protect the rate payers of this Commonwealth.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that the foregoing Motion to Hold Proceeding in Abeyance was served upon the parties in the attached service list by hand delivery on this the 4th day of August, 2004.

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**COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION I**

CIVIL ACTION NOS. 04-CI-962, 04-CI-970

**LOUISVILLE GAS & ELECTRIC COMPANY and,
KENTUCKY UTILITIES COMPANY**

PLAINTIFFS

**V. ATTORNEY GENERAL'S RESPONSE TO MOTIONS
 TO SET ASIDE AND QUASH AND FOR
 TEMPORARY INJUNCTION**

**GREGORY D. STUMBO, IN HIS OFFICIAL
CAPACITY AS ATTORNEY GENERAL OF THE
COMMONWEALTH OF KENTUCKY**

DEFENDANT

*** * * * ***

Comes the Attorney General of the Commonwealth of Kentucky, Gregory D. Stumbo, and files this response to the Plaintiffs' Motions to Set Aside and Quash and for Temporary Injunction. For the reasons stated more fully herein, the Motion and Memorandum filed in support thereof are devoid of merit and the motion should be denied.

INTRODUCTION

This action has been filed by the Public Service Commission (PSC) and Louisville Gas and Electric Company (LG&E), to block the Attorney General's legitimate investigation into matters affecting each and every citizen of the Commonwealth and the rates they pay for utilities. The PSC does not even attempt to make out a claim of irreparable harm, and indeed no harm whatsoever would flow from the disclosure and production of the requested documents.



The Attorney General has commenced an investigation to determine the extent of certain unlawful actions committed by utilities seeking to gain an unfair advantage in proceedings conducted by the PSC. The Rate Intervention Division of the Office of the Attorney General has discovered illegal *ex parte* communications occurring between the PSC and a regulated utility, in blatant violation of the duties imposed by statute and caselaw upon the PSC to protect the interests of the taxpayers.

On July 7, 2004, the Attorney General issued a first round of investigative demands pursuant to the authority granted by KRS 367.240, and open records requests pursuant to KRS Chapter 61. These documents were aimed at determining whether the pattern of unlawful *ex parte* communications extended into the recent ratemaking cases involving Louisville Gas and Electric Company (LG&E), and Kentucky Utilities Company (KU), which were resolved by final orders issued by the PSC on June 30, 2004. The investigative demands were issued to present and former employees of the PSC along with LG&E and KU with a requirement that the information be promptly provided.

On July 14, 2004, the Attorney General issued a second round of open records requests seeking disclosure of the extent of improper *ex parte* contacts between the PSC and the Kentucky-American Water Company. The existence of unlawful contact was already known to the Attorney General and issuance of this second set of records requests was an integral part of the methodical assessment of a suspected pattern of illegal behavior. The Attorney General will issue additional investigative demands in the near future.

As stated in the Civil Subpoena and Civil Investigative Demand, the Attorney General has determined it to be in the public interest to conduct an investigation and inquire of the

Plaintiffs concerning Public Service Commission (PSC) utility ratemaking proceedings. Accordingly, and in furtherance of that statutory authority vested in the Attorney General, investigative subpoenas and demands have issued to obtain information (documentary and testimonial) from employees of the Public Service Commission regarding the ratemaking process, matters which are uniquely within their possession. Despite the Plaintiffs' arguments to the contrary, clear precedent, of which this Court is especially familiar, (*see Commonwealth of Kentucky, ex rel. Chandler v. Anthem Insurance Companies*, Ky.App. 8 S.W.3d 48 (1999)), has held that the Attorney General is authorized to conduct investigations and institute litigation under the Kentucky Consumer Protection Act regarding matters that may also fall within the jurisdiction of a quasi-judicial administrative body such as the PSC. Accordingly, Plaintiffs are wrong when they argue that the administrative processes established by KRS Chapter 278 bar the Attorney General from conducting an investigation under the Consumer Protection Act.

Moreover, Plaintiffs are wrong when they argue that public employees are not subject to the Attorney General's subpoena power under KRS 367.240 and 367.250. Nothing in these statutes provides a "public employee" exemption as argued by the PSC. Rather, the statute is clear that "any person who is believed to have information, documentary material or physical evidence relevant to the alleged or suspected violation" may be compelled to provide such information.

The Attorney General recognizes that the ratemaking process may provide other opportunities to address potential violations of law and has not dismissed the possibility of pursuing these matters in that forum as suggested by the Plaintiffs. However, nothing in the statutes and no case law cited by the Plaintiffs forecloses the opportunity to proceed under the

Consumer Protection Act to investigate matters concerning the Public Service Commission, both as to matters involving the ongoing rate cases and matters affecting all proceedings before the PSC. To hold otherwise, to restrict the Attorney General's inquiry only to the matters in isolated cases, prevents the type of full and wide ranging inquiry which is necessary to assure the public that the PSC process is fair, open and transparent as required by the Kentucky Supreme Court in *Louisville Gas and Electric Company v. Cowan*, Ky., 862 S.W.2d 897 (1993) and jeopardizes the consuming public who depend upon the Attorney General to protect their interests.

The civil investigative demands and subpoenas are supported by ample evidence. The Public Service Commission has previously been chastised by the Courts for engaging in improper *ex parte* contacts. See *Louisville Gas and Electric Company v. Cowan*, *supra*. The Attorney General has obtained evidence consisting of illegal *ex parte* proposals from Kentucky-American Water Company, sign-in logs from the PSC's reception area, and telephone records that show numerous meetings and communications between PSC employees and employees and representatives of Louisville Gas and Electric and Kentucky Utilities and their agents and representatives occurred prior to and after the applications for rate increase were filed. The Attorney General fully intends to explore the substance of these meetings to determine if they appear to be improper or if they constitute illegal contact, either of which is actionable under *Louisville Gas and Electric Company v. Cowan*, Ky., 862 S.W.2d 897 (1993). Attached hereto is Exhibit 1, a partial listing of the suspicious contacts that have been identified so far.

The Public Service Commission is charged with setting utility rates affecting millions of consumers. It is a governmental unit answerable to the citizens of the Commonwealth – not a private business. As with other governmental agencies, it has been specifically directed by statute

to cooperate in the Attorney General's investigation. "All departments, agencies, officers, and employees of the Commonwealth shall fully cooperate with the Attorney General in carrying out the functions of KRS 367.120 to KRS 367.300." KRS 367.160(1). Rather than assisting the Attorney General, as it is required to do, the PSC has chosen to challenge an investigation designed to ensure the fair and impartial regulation of public utilities.

ARGUMENT

THE ATTORNEY GENERAL HAS AUTHORITY TO INVESTIGATE MATTERS INVOLVING QUASI-JUDICIAL ADMINISTRATIVE AGENCIES SUCH AS THE PUBLIC SERVICE COMMISSION.

The Plaintiffs erroneously contend that the Attorney General has attempted to "usurp" the PSC's authority by commencing an investigation concerning ratemaking cases currently before the PSC. The PSC claims that it has exclusive jurisdiction of all matters involving utilities under the auspices of KRS Chapter 278. This proposition has been conclusively refuted in a case recently decided by the Kentucky Court of Appeals.

The defense raised by the Plaintiffs in this case is very similar to the defenses raised by the Defendants in *Commonwealth ex rel. Chandler v. Anthem Insurance Companies Inc.*, Ky.App., 8 S.W.3d 48 (1999). In the Anthem case, the Attorney General sued Anthem alleging, inter alia, violations of the Consumer Protection Act in connection with the Kentucky Department of Insurance's approval of a merger of insurance companies and rates based upon allegedly fraudulent conduct. The Defendants asked the Court to dismiss the action base on the "filed rate doctrine." In addition, the Defendants contended that merger negotiations were not

“trade or commerce” and therefore any fraud in their conduct was beyond the reach of the Consumer Protection Act. *Id.* at 50-51.

Although the Court of Appeals concluded that the filed rate doctrine barred the Attorney General’s claim for damages from the allegedly fraud-based rates, the Court of Appeals held that the Consumer Protection Act did authorize the Attorney General’s action for injunctive relief and civil penalties, stating:

[T]he Consumer Protection Act, upon which the Attorney General bases his claim, provides for remedies other than damages, such as injunctive relief (KRS 367.190) and civil penalties (KRS 367.990). These alternative remedies do not implicate the filed rate doctrine, which, contrary to the appellees’ contentions, does not provide regulated entities with a general immunity from the laws governing business practice. . . .

Id. at 53.

As to the argument that the Consumer Protection Act did not reach the conduct in question, the Court of Appeals reiterated the broad scope given the Attorney General as stated repeatedly by Courts asked to restrict the Attorney General’s authority:

We note initially, that our Supreme Court has construed the Consumer Protection Act broadly to effectuate its purpose of “curtail[ing] unfair, false, misleading or deceptive practices in the conduct of commerce...” *Commonwealth v. North American Van Lines, Inc.*, Ky.App., 600 S.W.2d 459, 462 (1979).

The Court upheld the Attorney General’s sweeping authority under the Consumer Protection Act.

Also like the Plaintiffs in this case, the Defendants raised the issue of exhaustion of administrative remedies and the potential availability of relief under the Insurance Code. Again the Court of Appeals held that under the Consumer Protection Act, the legislature had intended to provide the Attorney General with broad and flexible tools and not straightjacket him in conducting investigations and enforcement actions to protect the public:

This last point raises an important question related to the administrative law concerns discussed above. Why, it may be asked, should the Attorney General be allowed to resort to the Consumer Protection Act when he may well have an administrative remedy under the Insurance Code? Administrative remedies must usually be exhausted before recourse can be had in court, and injunctive relief is usually inappropriate if the petitioner has an alternative remedy. Cf. *State of Georgia v. Pennsylvania R. Co.*, 324 U.S. 439, 65 S.Ct. 716, 89 L.Ed. 1051 (1945) (dissenting opinion by Justice Stone).

These considerations would very likely foil the remainder of the Attorney General's claim were it not for KRS 367.190. That statute, which underscores the Attorney General's authority to seek to enjoin unfair trade practices, provides in subpart (3) as follows:

In order to obtain a temporary or permanent injunction, it shall not be necessary to allege or prove that an adequate remedy at law does not exist. Further, it shall not be necessary to allege or prove that irreparable injury, loss or damage will result if the injunctive relief is denied.

We regard this relaxation of the usual standards governing the availability of an injunction as a strong indication of the General Assembly's intent that the Consumer Protection Act, in the hands of the Attorney General, be a flexible and effective means of combating abusive trade practices however novel their forms or well disguised their sources. Denying the Attorney General an opportunity to develop the case he has alleged against Anthem would frustrate that intent.

Id., at 55.

The same rationale applied by the Court of Appeals in the *Anthem* case applies here. The Attorney General has broad authority and responsibility to protect the public interest beyond that afforded any private litigant. The cases cited by the Plaintiffs are inapposite to the question at hand. The Courts have repeatedly rebuked those who sought to constrain the Attorney General's investigative and enforcement authority. The Courts have recognized the unique role of the Attorney General in protecting the public as empowered by the legislature in the Consumer Protection Act. The Attorney General's formal investigation into the processes of the Public

Service Commission should not be hampered through a formalistic application of the exhaustion doctrine.

The Attorney General has extremely broad functions, powers, and duties in matters of consumer protection which are not necessarily dependent upon the commission of unfair or deceptive acts. The Attorney General may conduct investigations affecting the marketplace and all other consumer affairs and take appropriate action. KRS 367.150(3). The Attorney General may study all laws, rules, regulations, orders, and policies affecting consumers. KRS 367.150(4). The Attorney General may then perform any incidental acts necessary to carry out his functions and powers. KRS 367.150(9).¹

This is not the first time a governmental agency has sought to prevent the Attorney General from fulfilling his lawful duties by refusing to cooperate with an investigation. In *Strong v. Chandler, Ky.*, 70 S.W.3d 405 (2002) the Supreme Court ruled the Cabinet for Economic Development had to allow *in camera* inspection of documents so the Attorney General could determine if corporations had fulfilled their contractual obligations for receiving economic incentives. The Court relied upon the general authority of the Attorney General as the Commonwealth's chief law officer under KRS 15.020 and as a protector of the treasury under

¹ KRS 367.150 states in pertinent part:

The Department of Law shall have the following functions, powers and duties:

(3) To conduct investigations, research, studies and analysis of matters affecting health, safety, the human environment, the marketplace and all other consumer affairs, and take appropriate action; to communicate the view of the consumer to state, county, and city agencies and officials;

(4) To study the operation of all laws, rules, regulations, orders, and state policies affecting consumers and to recommend to the Governor and to the Legislature, new legislation, rules, regulations, orders, and policies in the consumers' interest;

(9) To perform such other acts as may be incidental to the exercise of the functions, powers and duties set forth in KRS 367.120 to 367.300.

KRS 15.060. The Court stated, “The power granted by the statute is not limited to that which is expressly conferred but also includes that which is necessary to accomplish the things which are expressly authorized.” *Id.* at 410. The Court also recognized what it called the “common sense concept of investigating before filing” legal proceedings. *Id.*

Thus, in construing whether the investigative demands issued by the Attorney General are unreasonable, the Court must consider the sheer number of consumers affected, the statutory duty of the PSC to cooperate with the Attorney General, the broad grant of authority granted the Attorney General in this area, and the extremely tight time constraints in which the Attorney General must either file for a rehearing or file an appeal.

**THE PSC AND LG&E ARE PROPERLY SERVED WITH A
CIVIL INVESTIGATIVE DEMAND**

The PSC alleges in Count III that it and its employees are excluded from complying with civil investigative demands issued by the Attorney General. Plaintiffs assert that this exclusion stems from the fact that the PSC is not a “person” as defined by KRS 367.110(1) and that neither the PSC nor its employees conduct “trade or commerce” or engage in activity prohibited by KRS 367.110 to 367.300.

Regarding the assertion that the PSC is not a person as defined in KRS 367.110(1), the relevant statute provides:

“Person” means natural person, corporations, trusts, partnerships, incorporated or unincorporated associations, ***and any other legal entity.***

KRS 367.110(1) (emphasis added). As noted above, “person” includes all legal entities. The PSC, as defined by KRS 278.040(1) and admitted in paragraph one of its complaint, is a body corporate with the power to sue and be sued in its corporate name. The PSC, as this body

corporate, has shown itself in the past to be a legal entity through its capacity to bring a legal action and be named as a defendant in a legal action. (*Public Service Commission v. Warren County Water District*, 642 S.W.2d 594 (Ky.App. 1982); *Forest Hills Developers, Inc. v. Public Service Commission*, 936 S.W.2d 94 (Ky.App. 1996); *Inter-County Rural Electric Co-op. Corp. v. Public Service Commission*, 407 S.W.2d 127 (Ky. 1996); *Lexington Telephone Company v. Public Service Commission*, 224 S.W.2d 423 (Ky. 1949); *Williamson v. Public Service Commission*, 174 S.W.2d 526 (Ky. 1943)). Therefore, Plaintiff's argument that the PSC does not constitute a "person" should be disregarded.

As this Court is aware, the authority of the Attorney General to issue civil investigative demands (CIDs), as found in KRS 367.240, is broad in scope so as to accomplish the legislative intent behind the passage of the Consumer Protection Act.

The General Assembly finds that the public health, welfare, and interest require a strong and effective consumer protection program to protect the public interest and the well-being of both the consumer public and the ethical sellers of goods and services....

KRS 367.120. To that end, KRS 367.240(1), provides:

When the Attorney General has reason to believe that a person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by KRS 367.110 to 367.300, or when he believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in or is about to engage in, any act or practice declared to be unlawful by KRS 367.110 to 367.300, he may execute in writing and cause to be served upon any person who is believed to have information, documentary material or physical evidence relevant to the alleged or suspected violation, an investigative demand requiring such person to furnish, under oath or otherwise, a report in writing setting forth the relevant facts and circumstances of which he has knowledge, or to appear and testify or to produce relevant documentary material or physical evidence for examination, at such reasonable time and place as may be stated in the investigative demand, concerning the advertisement, sale or offering

for sale of any goods or services or the conduct of any trade or commerce that is the subject matter of the investigation.

(Emphasis added). Similarly, KRS 367.250 authorizes the Attorney General to issue subpoenas to “any person” as follows:

To accomplish the objectives and to carry out the duties prescribed by KRS 367.110 to 367.300, the Attorney General, in addition to other powers conferred upon him by KRS 367.110 to 367.300, **may issue subpoenas to any person, administer an oath or affirmation to any person,** or conduct hearings in aid of any investigation or inquiry, provided that information obtained pursuant to the powers conferred by KRS 367.110 to 367.300 shall not be made public or disclosed by the Attorney General or his employees beyond the extent necessary for law enforcement purposes in the public interest. (Enact. Acts 1972, ch. 4, § 15).

(Emphasis added).

The PSC would have this Court believe that the Attorney General may only issue a CID to those individuals taking part in unfair, false, misleading, or deceptive business practices. However, by the plain language of the statute it is evident that no such limitation exists and, to the contrary, provides that the Attorney General may issue a CID to *any person* believed to have information, documentation, or physical evidence relevant to the investigation. Therefore, it is irrelevant if the PSC or its employees engage in trade or commerce. By the clear language of KRS 367.240, if the Attorney General believes that an agency or its employees has information relevant to an investigation, they may be subject to a CID.

The PSC argues that because of the exclusionary language found in KRS 367.176 relating to the restraint or monopolization of trade or commerce, the PSC and its employees are exempt from complying with any CID prohibition against unfair, false, misleading or deceptive trade practices. While admittedly this exclusion may apply to the activities of the PSC for allegations of restraint or monopolization of trade or commerce under KRS 367.175, the exclusion has no

bearing on investigations undertaken pursuant to KRS 367.170 for unfair, false, misleading, or deceptive trade practices. KRS 367.176 is limited in applicability to the unlawful acts described in KRS 367.175. Because the basis for the Attorney General's investigation is limited to KRS 367.170, the exclusions of KRS 367.176 are inapplicable.

The PSC cites to KRS 367.290 remedies against businesses as grounds the Attorney General cannot make investigative demands on governmental entities (Memorandum in Support of Complaint and Emergency Motion, p. 5). They conveniently omit the remedies available against any person provided by KRS 367.290(1)(c) which allows the Attorney General to seek an order "granting such other relief as may be required, until the person files the statement or report, or obeys the subpoena or investigative demand."

**UNLAWFUL CONTACTS BETWEEN LG&E AND THE PSC
ARE PROPERLY INVESTIGATED BY THE ATTORNEY GENERAL**

The PSC expends considerable energy in arguing that no improper contacts occurred in the LG&E and KU rate case, based upon the Transcript of Hearing of May 6, 2004, which is attached as Appendix 1 to the PSC's memorandum. In fact, the transcript shows that the Assistant Attorneys General participating in the hearing were careful to state that they lacked personal knowledge as to the existence of meetings from which they may have been excluded. TR at p. 17.

A central purpose of the present investigation is to establish whether other meetings or contacts occurred. Obviously, a lack of knowledge by the AG's staff as to any such improper contact does not foreclose on inquiry by the Attorney General on this point. On the contrary, Kentucky caselaw establishes that LG&E, in particular, is no stranger to improper *ex parte*

contacts with the PSC. In *LG&E v. Cowan*, Ky. App. 862 S.W.2d 897 (1993), Judge (now Justice) Stumbo, writing for the court, described the improper contacts between LG&E and the PSC and found that there “was a communication on the merits between an interested party and agency decisionmakers. As such, it is improper and must be condemned no matter how innocently given or received.” 862 S.W.2d at 901.

The *LG&E* court made clear that “even... seemingly innocuous inquiries can be subtle or indirect attempts to influence the substantive outcome. Consequently, if the case is doubtful, the contact should be treated as one for possible sanction.” 862 S.W.2d at 900. The court also quoted authority holding that any such improper contacts are appropriately subject to a “ringing condemnation” and stated that “lest there be any doubt, we categorically reject any suggestions that *ex parte* contacts in Kentucky are, or should be, the ‘bread and butter’ of administrative proceedings to be tolerated with a knowing wink.” 862 S.W.2d at 901.

Kentucky law authorizes the Attorney General to continue to ensure that LG&E, in particular, has ceased its previous practice of making illegal contact with the PSC. In *Ward v. Com.*, Ky App., 566 S.W.2d 426 (1978), the only reported case in which an investigative demand from the Attorney General was disallowed, the court distinguished the seminal case of *United States v. Morton Salt Co.*, 388 US 632 (1950), which held that a company is properly required to demonstrate continuing compliance with the law. *Ward v. Com.*, *supra.*, 566 S.W.2d at 429. It is entirely appropriate for agencies charged with ensuring compliance with applicable laws to “let matters rest for a period of time,” and then confirm the continued lawful behavior of a business that has previously run afoul of the law. *Id.* This is precisely what the Attorney General’s present investigation will accomplish.

**THE ATTORNEY GENERAL IS INVESTIGATING
A CONTINUING PATTERN OF IMPROPER CONTACTS
BETWEEN THE PSC AND REGULATED UTILITIES**

In a recent adjustment case involving Kentucky-American Water Company, the Commission itself issued an Order² requiring formal application to the Commission. In contravention to this Order, the Executive Director and Kentucky-American circumvented this Order by permitting Kentucky-American to proceed informally and *ex parte*.

Despite this clear directive that a formal application was required, Kentucky American and the PSC have engaged in a series of *ex parte* contacts regarding this very matter. After becoming aware of these contacts from other parties, the Attorney General objected in writing to the Commissioners and to Kentucky American.

The concern of this Office is that Kentucky-American's submission of an informal request for the establishment of regulatory assets, which is contrary to the company's duty under a Commission order, and the lack of evidence of KAWC's compliance with the Commission's regulation for the protection of confidential information suggest that the company is not using the proper regulatory processes. The failure to utilize the proper processes deprives the public of the right to monitor and meaningfully participate in proceedings.

* * *

Please advise this Office if there are any additional Commission proceedings on either of these two matters.

Despite this objection, subsequent *ex parte* contacts in the form of letters were sent by both Kentucky American and the PSC. Again, the Attorney General's Office objected.

²The Commission is concerned with Kentucky-American's present practice of deferring expenses as regulatory assets. **In the future Kentucky-American shall formally apply for Commission approval before accruing an expense as a regulatory asset**, regardless of the ratemaking treatment that the Commission has afforded such expense in previous rate case proceedings. The Commission will consider each expense independently with particular regard to materiality. (PSC Case No. 2000-00120)

To Chairman Huelsmann, Vice Chairman Gillis and Commissioner Spurlin. The Public Service Commission and the Kentucky-American Water Company are privately negotiating a matter that - by a Commission Order that remains in force - requires a formal application. **The process is improper, unofficial, and unlawful. The Attorney General objects and asks that it end.**

See correspondence appended hereto as Exhibit 2.

The demonstrated pattern of *ex parte* contacts in the Kentucky-American case combined with the suspicious contacts between the PSC and LG&E justify the Attorney General's investigation of this matter.

THE ATTORNEY GENERAL'S ACTIONS ARE REASONABLE

The Kentucky Supreme Court has held that it is not necessary for a civil investigative demand issued by the Attorney General to recite on its face the reason or grounds for its issue. *Commonwealth of Kentucky, ex rel. Ed W. Hancock, Attorney General v. Louis Pineur*, 533 S.W.2d 527, 528-529, (Ky. 1976). As cited by Chief Justice Palmore in *Pineur*, the analysis of Justice Robert Jackson on the issue retains its relevancy.

The only power that is involved here is the power to get information from those who best can give it and who are most interested in not doing so. Because judicial power is reluctant if not unable to summon evidence until it is shown relevant to issues in litigation, it does not follow that an administrative agency charged with seeing that the laws are enforced may not have and exercise powers of original inquiry. It has a power of inquisition, if one chooses to call it that, which is not derived from the judicial function. It is more analogous to the Grand Jury, which does not depend on case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not.

Id. at 529.

In the only reported case to ever strike down a subpoena of the Attorney General under the Consumer Protection Act, the Court of Appeals determined that a television report, without

more, was insufficient reason to issue an investigative demand to a private business. *Ward v. Commonwealth ex rel. Stephens*, Ky.App., 566 S.W.2d. 426 (1978). While not explicitly stated by the Court, the investigative demand in that case had evidently been issued pursuant to the first grant of authority to the Attorney General – that there was reason to believe the business had violated the Consumer Protection Act. The case now before the Court is remarkably different because of the public interest involved in this case and the party seeking protection.

In *Ward* the Attorney General only had an unverified news report as evidence to support his investigation. In the instant case, the Attorney General has already demonstrated a pattern of questionable activity requiring that an investigation should be made to serve the public interest.

Lastly, the PSC argues that the use of CIDs is an arbitrary power over the lives, liberty and property of individuals in violation of the Constitution of Kentucky, § 2. Section 2 provides that “Absolute and arbitrary power over the lives, liberty, and property of freemen exists nowhere in a republic, not even in the largest majority.” It is clear that Section 2 of this provision was intended to protect citizens from their government, not to protect a governmental agency. This limitation was made clear by *Guthrie v. Curlin*, Ky., 263 S.W.2d 240, 244 (1953) when the Court reaffirmed an earlier case by declaring that Section 2 “has to do only with the exercise of arbitrary power over the lives, liberty and property of individuals, and not with the handling of state property or funds.”

This conclusion is buttressed by determinations made regarding the federal counterpart to Section 2 – the Fourteenth Amendment of the United States Constitution and its Due Process Clause. Courts have repeatedly held that the Fourteenth Amendment does not protect governmental agencies. *See, e.g., Commonwealth of Pennsylvania v. Porter*, 659 F.2d 306, 314

(3rd Cir. 1981); *State of Nebraska v. Central Interstate Low-Level Radioactive Waste Commission*, 974 F.Supp. 762 (D.Neb.1997). Therefore, Plaintiffs, as officials of state government, have no standing to assert this as a claim for relief.

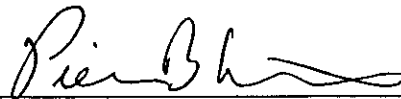
Assuming *arguendo* that Plaintiffs have standing to assert the protections of Section 2, it is unclear exactly what aspect of an individual's life, liberty, or property Plaintiffs believe are being subject to arbitrary power under the CID authority of the Attorney General. However, Kentucky courts have held that the § 2 protection of our personal rights and freedoms are subject to certain reasonable restraints under the state police powers so that the safety, order, and public welfare may be protected. *Commonwealth of Kentucky v. Mary A. Mitchell*, Ky., 355 S.W.2d 686, 688 (1962).

The Attorney General's authority to issue CIDs is one of those reasonable restraints so that the Attorney General may fulfill his role as chief law enforcement officer of the Commonwealth and so that the public may be protected from illegal activity. Simply because the last information obtained by the PSC indicated that no illegal activity had occurred during the rate making process does not mean that the Attorney General is prohibited from exercising his investigatory powers in furtherance of information obtained since that time. Additionally, simply because the CIDs received by Plaintiffs do not recite the reason or grounds for their issuance does not make their issuance an arbitrary power over the lives, liberty, and property of individuals.

CONCLUSION

For the foregoing reasons, the Court should deny the requested relief, and permit the Attorney General to carry out his statutorily authorized duties.

Respectfully submitted,



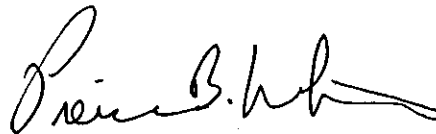
PIERCE B. WHITES
ASSISTANT DEPUTY ATTORNEY GENERAL
700 CAPITOL AVE., STE 118
FRANKFORT KY 40601
(502) 696-5300

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and correct copy of the foregoing was served by hand-delivery on July 15, 2004 to:

Hon. William D. Kirkland
McBrayer, McGinnis, Leslie & Kirkland
300 State National Bank Building
P.O. Box 1100
Frankfort KY 40602

Hon. C. Edward Glasscock
Hon. Robert C. Webb
Hon. David S. Kaplan
400 West Market Street, 32nd Floor
Louisville KY 40202-3363



Pierce B. Whites
Assistant Deputy Attorney General

EXHIBIT 1

REPRESENTATIVE LIST OF UNEXPLAINED PSC CONTACTS
WITH LG & E WHERE THE ATTORNEY GENERAL IS NOT PRESENT

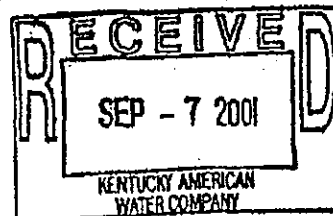
1. August 28, 2003 – Mike Beer and George Siemens of LG & E come to visit Bob Amato (Deputy Executive Director) at the PSC at 10 am.
2. November 6, 2003 – Mark Johnson of LG & E visits Richard Raff at the PSC at 12:50 pm.
3. **November 21, 2003 – Mike Beer of LG & E visits Aaron Greenwell from the Division of Financial Analysis from 1:25 pm to 2:30 pm.**
4. **November 25, 2003 – Mike Toll of LG & E comes to see Bob Amato (Deputy Executive Director) at 8:45 am – leaves at 1:20 pm. (This is the same day that the Courier Journal reports that LG & E will seek an increase in rates.)**
5. January 16, 2004 - Joe Ryan and Barry Walker of LG & E meet with Bob Amato from 10:15 am to 11:40 am.
6. **February 10, 2004 – George Siemens comes to see Tom Dorman.**
7. **February 17, 2004 – David Freibert of LG & E meets with Tom Dorman.**
8. **February 18, 2004 – George Siemens (lobbyist and vice president for LG & E) meets with Tom Dorman from 3:50 pm to 5:00 pm**
9. February 27, 2004, Unidentified LG & E representative meets with Anita Mitchell
10. March 3, 2004 – Guy Ferguson of LG & E comes to see Jeff Schroeder, 3:30pm.
11. March 3, 2004 – Mike Beer and Kent Blake of LG & E come to the PSC – they do not list who they are there to see, nor the time of their visit.
12. **March 23, 2004 – Mike Beer (Vice President), George Siemens (Vice President), and Vic Staffieri (Chairman and CEO) meet with Chairman Goss and staff.**
13. April 6, 2004 – David McGeorge of LG & E comes to see Denis Hildenbrand – 3 pm-4:30 pm.
14. April 7, 2004 – Steve Denning of LG & E comes to see David White – 10:35 am to 11:45.
15. May 3, 2004 - John Wolfram of LG & E visits Isaac Scott (PSC Division of Financial Analysis)
16. **May 3, 2004 – John McCall, Mike Beer and George Siemens come to the PSC at 1:30 pm – they do not list who they are there to see.**
17. May 4, 2004 – Tammy Elzy of LG & E/KU and another employee come to see Isaac Scott (PSC Division of Financial Analysis).
18. May 5?, 2004 – Valerie Scott of LG & E comes to the PSC at 12:30 pm – not listed who she sees.
19. May 21, 2004 – George Siemens and Laura Day of LG & E come to see Tom Dorman.
20. May 25, 2004 – Chris Whelan of LG & E comes to see “Andrew M.” at 2:55 pm.
21. June 16, 2004 – Howard Bush and Diana Schork with LG & E come to see Ginny Smith (Director, Division of Consumer Services). – 9 am to 10:05.
22. June 24, 2004 - Unidentified LG & E representative (appears to be George Siemens) comes to see Executive Director Beth O’Donnell at 2:50 pm.

EXHIBIT 2

STOLL | KEENON | & | PARK | LLP

300 WEST VINE STREET | SUITE 2100 | LEXINGTON, KENTUCKY 40507-1801
(859) 231-3000 PHONE | (859) 253-1093 FAX | WWW.SKP.COM

LINDSEY W. INGRAM, JR.
859-231-3033
ingramjr@skp.com



September 6, 2001

Mr. Tom Dorman
Public Service Commission
211 Sower Blvd.
Frankfort, Kentucky 40601

RE: Kentucky-American Water Company - Deferrals

Dear Tom:

By Order dated November 27, 2000, in Case No. 2000-120, the Commission ordered Kentucky-American to apply for the approval of the accruing of expenses as regulatory assets. The purpose of this letter is to request Commission approval of the establishment of regulatory assets to accrue the following expenses:

1. Acquisitions. Kentucky-American incurs costs in acquiring and attempting to acquire water utilities. Typically the costs would include engineering, financial, legal, appraising, accountants, and efforts to comply with contractual, regulatory and permitting requirements. To date Kentucky-American has incurred costs relative to five potential acquisitions as follows:

<u>Entity</u>	<u>Accruals</u>
Municipality A	\$54,954.44
Municipality B	\$12,255.01
Municipality C	\$15,664.79
Water Company A	\$45,341.92
Water Association A	\$ 3,751.75

If the Commission is interested in the specific identification of the entities, Kentucky-American will be glad to provide that information subject to confidential treatment by the Commission.

2. Preliminary Service and Design. Kentucky-American incurs costs for water main extensions and installations such as engineering, legal, surveying, geotechnical, environmental, appraisal and land acquisition costs. At the present time Kentucky-American requests specific approval for the deferral of \$73,453.61 incurred to date for the North Broadway project and \$80,000 projected to be incurred for the Leestown Road project.

The North Broadway project involves the replacement of a 6-inch cast iron main extending from Short Street to Loudon Avenue which was installed in 1885. Initially Kentucky-American intended to install an 8-inch main but the project has been temporarily deferred pending a study of future water demands in the area and associated fire flow requirements. The Leestown Road extension is scheduled for construction in 2002 and involves the installation of a 16-inch main from Sandersville Road to the end of the urban services area. The size and length of this facility is currently under review pending the resolution of any regional source of supply issues.

3. Tank Painting. Consistent with the treatment afforded Kentucky-American in rate orders, Kentucky-American projects a cost of \$305,000 to paint the Tates Creek elevated storage tank.

4. Sludge Removal. Again, consistent with prior orders Kentucky-American seeks to defer \$200,000 as the project costs for the removal of sludge from the Kentucky River treatment plant.

5. Customer Service Consolidation. American Water Works has established a Call Center in Alton, Illinois, and Kentucky-American plans to utilize those facilities in the third quarter of 2002. Service to Kentucky-American's customers will be greatly improved. All customer contacts, billing inquiries, service issues, and field service emergencies can be handled by the Alton Call Center by telephone on a 24-hour per day, 7-day per week basis. At the present time telephone customer service is provided only during normal working hours. Kentucky-American anticipates transition costs of approximately \$525,000. The deferred expenses will be reduced by savings in operating costs in the future as they are realized. Any unamortized deferred expense can be considered in Kentucky-American's next rate case if savings have not eliminated the deferral at that time.

6. Financial Service Consolidation. American Water Works is in the process of establishing a shared Service Center in New Jersey to provide accounting, finance, human resources and rate assistance and analysis in the first quarter of 2002. Kentucky-American anticipates a transition cost of \$918,000. As with the Call Center, Kentucky-American anticipates the deferred expense will be reduced by savings in operating costs over time and any

Mr. Tom Dorman
September 6, 2001
Page 3

unamortized deferred expense will be considered in Kentucky-American's next rate case if the then accumulated savings have not eliminated the deferred costs at that time.

As usual, we will be glad to supply any additional information that the Commission or staff may require.

With best regards, I am

Very truly yours,

STOLL, KEENON & PARK, LLP

By 
Lindsey Ingram, Jr.

/s/

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S T O L L | K E E N O N | & | P A R K | L L P

300 WEST VINE STREET | SUITE 2100 | LEXINGTON, KENTUCKY 40507-1801
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LINDSEY W. INGRAM, JR.
859-231-3033
ingramjr@skp.com

September 24, 2003

RECEIVED

SEP 24 2003

PUBLIC SERVICE
COMMISSION

Via Hand Delivery

Mr. Thomas Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

RE: Kentucky-American Water Company - Deferrals

Dear Tom:

As we have previously done by letter dated September 6, 2001, and discussed in a conference with members of the staff on October 25, 2001, the purpose of this letter is to request Commission approval of the establishment of two additional regulatory assets to accrue expenses as required by the Commission's Order dated November 27, 2002, in Case No. 2000-120:

1. SECURITY COSTS. Kentucky-American became aware that post-September 11, 2001 enhanced security measures were essential for the continued provision of potable water to its customers. Security measures that, pre September 11, were designed primarily to address deterrence of vandalism or accident avoidance had to be reassessed in light of a substantially heightened risk profile that now include organized terrorist groups intent on deliberately inflicting as much harm to life and property as possible. In light of these new threats it was prudent and necessary for Kentucky-American to implement measures to prevent raw and finished water contamination, infrastructure attacks, and computerized tampering. Kentucky-American sought recovery of the costs associated with the protection of its assets by a tariff filed with the Commission on November 28, 2001, Case 2001-440. Condition 2 in the Commission's order of May 30, 2002, in Case 2002-00018, subsequently accepted by the parties, ordered the withdrawal of the Asset Protection Charge Tariff with consideration for the recovery of costs associated with the protection of water utility assets to occur only in cases for the adjustments of general rates for water service. On June 10, 2002 Kentucky-American filed its notice of the withdrawal of its asset protection tariff. On July 8, 2002 Case 2001-440 was removed from the Commission's docket. Continued protection of the assets devoted to the provision of water

Mr. Tom Dorman
September 24, 2003
Page 2

service is critical. As recently as September 4, 2003, the Department of Homeland Security advised that "Al-Qaeda views critical infrastructure targets in the US as attractive attack options because of their potentially significant economic and psychological impacts. These targets include:...Water reservoirs and systems, including dams." To protect its customers Kentucky-American has incurred security expenses through August 22, 2003 of \$2,619,640.88.

2. CONDEMNATION COSTS. On July 3, 2003, the Lexington-Fayette Urban County Government filed a Verified Petition in the Fayette Circuit Court seeking to acquire by eminent domain all of the real and personal property of Kentucky-American used in connection with, or reasonably necessary or desirable in connection with the provision of water service in Fayette, Bourbon, Clark, Harrison, Jessamine, Owen, Scott and Woodford Counties, Kentucky. Thereafter, on July 17, 2003, Kentucky-American Water Company filed a Complaint against the Lexington-Fayette Urban County Government alleging that Resolution No. 326-2003 of the Lexington-Fayette Urban County Council authorizing the eminent domain proceeding was invalid. The cost and expenses attendant to these lawsuits will be incurred for the benefit of the customers of Kentucky-American as it is not in their best interest that the local government take over the assets of Kentucky-American and thereby remove governmental regulation of the rates and services to over 105,000 customers. All of the cost and expenses incurred in litigating the attempted takeover should be classified as a regulatory asset.

We will be glad to supply any additional information that the Commissioner's staff may require.

With best regards, I am

Very truly yours,

STOLL, KEENON & PARK, LLP

By Lindsey
Lindsey Ingram, Jr.



Paul E. Patton, Governor

Janie A. Miller, Secretary
Public Protection and
Regulation Cabinet

Thomas M. Dorman
Executive Director
Public Service Commission

COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
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psc.ky.gov
(502) 564-3940
Fax (502) 564-3460

Martin J. Huelsmann
Chairman

Gary W. Gillis
Vice Chairman

Robert E. Spurlin
Commissioner

October 15, 2003

The Honorable Lindsey W. Ingram, Jr.
Stoll, Keenon & Park, LLP.
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507-1801

RE: Kentucky-American Water Company – Deferrals

Dear Mr. Ingram:

The Commission Staff has reviewed your September 24, 2003 letter requesting authorization for Kentucky-American to establish two regulatory assets to accrue expenses as required by the Commission in its Order in Kentucky-American's last rate case. Specifically, you request authorization to establish regulatory assets to accrue post-September 11, 2001 enhanced security costs and to accrue expenses incurred for litigating the proposed condemnation of Kentucky-American by the Lexington-Fayette Urban County Government (LFUCG).

Based on the information contained in your September 26, 2003 letter, the Commission Staff has concluded that it is not appropriate to grant the authorization you request.

As you point out in your letter, RWE, Thames, AWWC and KAWC accepted Condition 2 of the Commission's May 30, 2002 Order in Case No 2002-00018 which authorized the transfer of control of Kentucky-American. In addition to the withdrawal of the Asset Protection Tariff, Condition 2 prohibited Kentucky-American from applying "... for the recovery of costs associated with the protection of water utility assets except through adjustments in its general rates" for five years from the date of the Order. The Staff finds that authorization to establish a regulatory asset to accrue such costs would be a violation of that condition and should not be allowed.

In your letter, you also state that the costs associated with the condemnation lawsuits "Will be incurred for the benefit of the customers of Kentucky-American as it is not in their best interest that the local government take over the assets of Kentucky-



AN EQUAL OPPORTUNITY EMPLOYER M/F/D

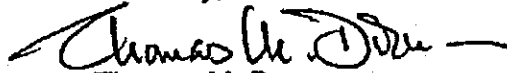
Hon. Lindsey W. Ingram, Jr.
October 15, 2003
Page 2

American and thereby remove governmental regulation of the rates and services to over 105,000 customers." Although the Commission has authorized the acquisition by RWE, it has made no findings regarding the proposed condemnation by LFUCG. Accordingly, the Staff finds the request to establish a regulatory asset to accrue such costs should not be allowed.

Normally, requests to defer expenses or establish regulatory assets are addressed informally at the Staff level. However, as always, if you desire to pursue this matter, you may petition the Commission for formal consideration of your request.

Feel free to contact me at anytime if you have any questions.

Sincerely,



Thomas M. Dorman,
Executive Director



AN EQUAL OPPORTUNITY EMPLOYER M/F/D



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

ALBERT B. CHANDLER III
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE
FRANKFORT, KY 40601-8204

30 October 2003

Hand Delivery

Martin J. Huelsmann, Chairman
Gary W. Gillis, Vice Chairman
Robert E. Spurlin, Commissioner
Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

RE: Kentucky-American Water Company

TO: Chairman Huelsmann, Vice Chairman Gillis, Commissioner Gillis

By a September 24th letter from Lindsey W. Ingram, Jr., to Thomas Dorman, Kentucky-American Water Company made a request for the establishment of two regulatory assets. On October 15th, the Commission advised KAWC by letter that it is not appropriate to grant the request.

Per Kentucky-American's most recent rate case (Case No. 2000-00120), the company is under a mandate to formally apply for Commission approval before accruing an expense as a regulatory asset. It appears that Kentucky-American's recent attempt to establish regulatory assets by a method other than by a petition for formal consideration of the request violates that requirement.

Also, in another recent matter involving Kentucky-American, the status of at least one of the documents in that record remains unclear. The record in Case No. 2003-00270 includes a Storage Capacity Analysis for KAWC. There are two versions of this report, a complete version and a redacted version. The Orders for that case do not include an order granting confidential treatment for the Analysis. It is not clear whether Kentucky-American ever sought or obtained protection for the report under the regulations for confidential information.



The concern of this Office is that Kentucky-American's submission of an informal request for the establishment of regulatory assets, which is contrary to the company's duty under a Commission order, and the lack of evidence of KAWC's compliance with the Commission's regulation for the protection of confidential information suggest that the company is not using the proper regulatory processes. The failure to utilize the proper processes deprives the public of the right to monitor and meaningfully participate in proceedings.

While this Office is in agreement with the Commission that it is not appropriate to grant Kentucky-American's request for the regulatory assets, it also is important for the Company to utilize the proper process for obtaining this type of determination. Likewise, if the company submits confidential information to the Commission, it is important for Kentucky-American to take the proper steps to identify the material and obtain a protective order.

Please advise this Office if there are any additional Commission proceedings on either of these two matters.

Sincerely,

A B CHANDLER III
ATTORNEY GENERAL

David Edward Spenard
David Edward Spenard
Assistant Attorney General

cc: Lindsey W. Ingram, Jr.
David L. Holmes
Foster Ockerman, Jr.

S T O L L | K E E N O N | & | P A R K | L L P

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LINDSEY W. INGRAM, JR.
859-231-3033
ingramjr@skp.com

RECEIVED

NOV 18 2003

PUBLIC SERVICE
COMMISSION

November 18, 2003

Via Hand Delivery

Mr. Thomas Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

RE: Kentucky American Water - Deferrals

Dear Tom:

Please consider this request of Kentucky American Water for the Staff of the Commission to review the conclusions set forth in your letter of October 15, 2003, and one of my the requests contained in my letter of September 24, 2003.

SECURITY COSTS. Your letter stated the Staff conclusion that approval to establish an account to accrue the deferral of security costs incurred after September 11, 2001, would constitute a violation of Condition 2 of Appendix A of the Commission's Order in Case No. 2002-00317. That condition is:

"At no time prior to May 30, 2007, will KAWC apply to the Commission for recovery of costs associated with the protection of water utility assets except through adjustments in its general rates for water service."

My letter of September 24, 2003, requesting approval for the establishment of an account to accrue expenses incurred after September 11, 2001, for enhanced security measures was not a request for "recovery of costs" as prohibited by Condition No. 2. Prior to the applications for approval of the Change of Control of Kentucky American Water (Cases No. 2002-00018 and 2002-00317), Kentucky American Water filed an "Asset Protection Charge Tariff" establishing a procedure for the recovery of post-September 11, 2001, enhanced security measures. The requested procedure would have allowed a quarterly adjustment in Kentucky American Water's

Mr. Tom Dorman
November 18, 2003
Page 2

rates to recover its enhanced security costs. As a part of the approval of the requested change of control, the Commission found that changes in operating practices would likely produce changes in cost of service.¹ The Commission specifically found that, in view of anticipated changes in operating practices, maintenance of Kentucky American Water's rates was in the public interest until March 16, 2004, or one year following the date of the closing of the merger, whichever occurred later. The maintenance of Kentucky American Water's rates then in effect required the withdrawal of the Asset Protection Charge Tariff or its denial. Having found that the public interest would be served by the maintenance of the existing structure, the Commission found "that the introduction of any new rate mechanism regarding security costs at this time is inappropriate and that KAWC's proposal for such mechanism, which is currently under view in Case No. 2001-00440, should be withdrawn until KAWC's integration with Thames is complete."²

The purpose of the Commission's Condition 2 was to freeze the rates of Kentucky American Water until March 16, 2004, or one year after the closing. The requested approval for the establishment of a deferred asset will not affect the existing rates of Kentucky American Water at all. The propriety of the inclusion of any of the post-September 11, 2001 enhanced securities costs can be fully addressed and examined in Kentucky American Water's next general rate case.

The matter of the treatment of post-September 11, 2001 enhanced security costs has been examined by the Missouri Public Service Commission in Case No. WO-2002-273. Missouri-American Water Company filed an application for an Accounting Authority Order for its post-September 11, 2001 enhanced security costs. By way of explanation the Missouri Commission stated:

"An AAO is an order of the Commission authorizing an accounting treatment for a transaction or group of transactions other than that prescribed by the Uniform System of Accounts. It is an accounting mechanism that is generally used to permit deferral of costs from one period to another. The items deferred are booked as a regulatory asset rather than as an expense, thus improving the financial picture of the utility in question during the deferral period. During a subsequent rate case, the Commission determines what portion, if any, of the deferred amounts will be recovered in rates." (Citations omitted, emphasis added.)³

¹ Case No. 2002-00018, Order, May 30, 2002, p. 17.

² *Id.* at 18.

³ Missouri Public Service Commission, Case No. WO-2002-273, Report and Order, December 20, 2002, page 3.

In approving the request, the Commission carefully pointed out that its actions did not change rates.

"By seeking an AAO, Missouri-American seeks to preserve the possibility—not the certainty—of recovering some of the expenditures made to upgrade security from the very ratepayers protected thereby. It is true that the management of Missouri-American chose to make the expenditures under consideration in this case; it was not required to do so by any governmental agency or Act of God. However, that point is simply one of the circumstances that the Commission must consider, as is the fact that the decision was made in the light of the events of 9-11 and the various governmental responses to those events. For these reasons, the Commission concludes that an AAO is reasonable under all of the circumstances and should be granted."⁴

In like fashion, the Idaho Public Utilities Commission made it clear that its authorization of a deferral does not change rates and does not constitute any abdication of the Commission's right to judge the amount of the deferral that should be subsequently recovered. In Case No. UWI-W-01-2, United Water Idaho Inc. requested the deferral of some electric power costs it was going to incur as a result of a rate increase from its electrical supplier. The Commission concluded:

"The Commission finds it reasonable to authorize such a deferral. The Company also proposes to apply a carrying charge on the unamortized deferral balances at a rate equal to the customer's deposit rate. The Commission finds it reasonable to reserve judgment on the recovery of the amount deferred as well as the appropriateness of any carrying charge until actual recovery is requested."⁵

The Pennsylvania Public Utility Commission has also approved Pennsylvania-American Water's request for deferred accounting treatment for a post-September 11, 2001 incremental security costs.⁶ The Pennsylvania Commission concluded:

⁴ *Id.*, p. 30.

⁵ Order, July 31, 2001, p. 3.

⁶ Pennsylvania Public Utility Commission, Case R-00027983, Opinion and Order entered July 24, 2003, currently on appeal.

"However, we will adopt the ALJ's recommendation that we grant the Petition at Docket No. R-00027983 with respect to deferred accounting treatment for the company's claimed incremental security costs incurred between September 11, 2001 and the resolution of the company's upcoming general base rate case. We note that the Company has attempted to enhance security at its intrastate facilities in an effort to safeguard the quality and reliability of its water operations. However, approval of deferred accounting treatment is not an assurance of future rate recovery of the claims incremental security costs. It is incumbent upon the Company to demonstrate its right of rate recovery of the claimed incremental security costs, or portions thereof, in its pending general base rate case through the submission of additional evidence; . . ."

On March 5, 2001, West Virginia-American Water Company filed an application with the Public Service Commission of West Virginia for an increase in its rates. During the pendency of that case, and after September 11, 2001, West Virginia-American Water Company requested the Commission's consideration of the allowance of enhanced security costs. The Commission declined to include the enhanced security costs in the pending rate case but did authorize the deferral for consideration in the next rate case.

"The Commission is concerned about the very real possibility of harm to the State's utility infrastructure in light of the events of September 11, 2001. To this end, the Commission sees the need for heightened security. The Commission is also aware that heightened security may well lead to higher costs. Furthermore, the Commission is also acutely aware of the need not to publicize steps being taken by the company to insure the safety of the public water supply. However, the Commission is not prepared at this time to grant rate recover to the company in the form of a surcharge or rider to the rates contained in the current ongoing rate case. Instead, since the Commission will consider the initial amount, carrying costs and timing of recovery of all security related costs that are unusual or extraordinary (as compared to costs that represent normal historic operations) in the Company's next rate case, we shall direct the Company to defer the actual costs of additional security. The Commission directs this deferral in recognition of the fact that we shall provide the Company with the opportunity to recover its deferred costs in future rates. Accordingly, the Company may request recovery of these deferred costs when it files its next rate case. This will give the Commission and interested parties an

⁷ *Id.*, pp. 8-9.

Mr. Tom Dorman
November 18, 2003
Page 5

opportunity to review the reasonableness and prudence of the Company's actions, the actual level of plant additions and operating costs incurred and the extent to which deferred costs are unusual or extraordinary as compared to normal, historic operations. The Commission will allow recovery of reasonable deferred costs in future rate cases after our review of the actual level of unusual or extraordinary security costs, the prudence of the costs and the appropriate timing for such recovery, but only to the extent that the Commission finds the costs are reasonable, necessary and prudent."⁸

In West Virginia-American Water Company's next rate case, Case No. 03-0353-W-42T, currently pending before the West Virginia Public Service Commission, James W. Ellars, Chief Utilities Manager in the Commission's Engineering Division reviewed the deferred security costs and made his recommendation in his prepared direct testimony:

"Based on the Company's records that were made available for review, it is my opinion that the deferred expenses of \$5,015,224 incurred by the Company since September 11, 2001, are prudent, reasonable and necessary to insure the security of the Company's facilities."⁹

Kentucky American Water respectfully asks the Staff to reconsider its position because (1) the approval of the deferral will not violate any Commission condition prohibiting changes in rates and (2) the approval will not affect the Commission's authority to determine the reasonableness and prudence of enhanced security costs in the next general rate case.

If the members of the Staff involved in the determination which I ask be reconsidered need any additional information, please let me know.

Very truly yours,
STOLL, KEENON & PARK, LLP

By Lindsey Ingram, Jr.
Lindsey Ingram, Jr.

/s/
312\C:\work\lwi\kawd\genora\791 Dorman.doc

⁸ West Virginia Public Service Commission, Case No. 01-0326-W-42T, Order, December 21, 2001, p. 12.

⁹ Direct testimony of James W. Ellars, p. 7.



Paul E. Patton, Governor

**Janie A. Miller, Secretary
Public Protection and
Regulation Cabinet**

**Thomas M. Dorman
Executive Director
Public Service Commission**

**COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
211 SOWER BOULEVARD
POST OFFICE BOX 615
FRANKFORT, KENTUCKY 40602-0615
psc.ky.gov
(502) 564-3940
Fax (502) 564-3460**

**Martin J. Huelsmann
Chairman**

**Gary W. Gillis
Vice Chairman**

**Robert E. Spurlin
Commissioner**

November 21, 2003

**Hon. Lindsey Ingram, Jr.
Stoff, Keenon & Park, LLP
300 West Vine Street
Suite 2100
Lexington, Kentucky 40507-1801**

RE: Kentucky-American Water Company - Deferrals

Dear Mr. Ingram:

The Staff is reviewing your November 18 letter and is giving additional consideration to Kentucky-American's request for approval to establish a regulatory asset for accruing deferred post September 11, 2001 security costs.

To aid in this review, Staff requests the following information:

- The final order issued in the Missouri Public Service Commission Case No. WO-2002-273.
- The final order issued in the Pennsylvania Public Utility Commission Case No. R-00027983.
- The final order issued in the West Virginia Public Service Commission Case No. 03-0353-W-42T.
- A copy of the petitions filed by Kentucky-American's sister corporations in each of the above-referenced cases.
- A copy of any intervenor or other third party comments made regarding the establishment of a regulatory asset in the above-referenced cases.

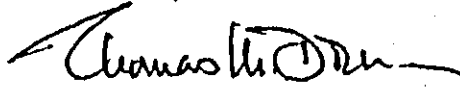


AN EQUAL OPPORTUNITY EMPLOYER M/F/D

Letter to Ingram
November 21, 2003
Page 2 of 2

If you have any questions concerning this request or any other matter in which the Commission may be of assistance, please contact Aaron Greenwell or Dennis Jones of the Commission's staff at any time.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas M. Dorman", with a long horizontal flourish extending to the right.

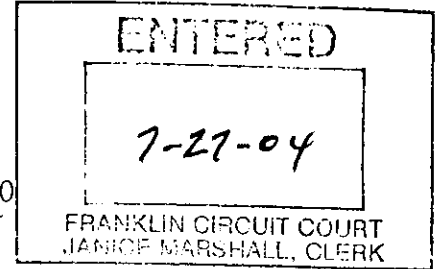
Thomas M. Dorman
Executive Director

cc: David Holmes, LFUCG
David Spenard, Office of the Attorney General

Attachments

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION I

CIVIL ACTION NOS. 04-CI-962 AND 04-CI-970



KENTUCKY PUBLIC SERVICE COMMISSION,
ON BEHALF OF ITSELF AND SIXTEEN
CURRENT OR FORMER EMPLOYEES

PLAINTIFFS

V.
GREGORY D. STUMBO, IN HIS OFFICIAL
CAPACITY AS ATTORNEY GENERAL OF THE
COMMONWEALTH OF KENTUCKY

DEFENDANT

AND

KENTUCKY UTILITIES COMPANY
and LOUISVILLE GAS AND ELECTRIC COMPANY

PLAINTIFFS

V.

GREGORY D. STUMBO, ATTORNEY GENERAL

DEFENDANT

**ORDER CONSOLIDATING ACTIONS
AND OVERRULING PLAINTIFFS' REQUESTS
TO QUASH SUBPOENA AND FOR TEMPORARY INUNCTION**

The Kentucky Public Service Commission (PSC) filed a complaint, motion for temporary injunction and emergency petition in action number 04-CI-062 essentially seeking to quash certain subpoenas and investigative demands issued by the Attorney General pursuant to KRS Chapter 367. Kentucky Utilities Company (KU) and Louisville Gas and Electric Company (LG&E) filed an emergency petition in civil action number 04-CI-070 seeking to quash or, alternatively, to modify subpoenas and investigative demands issued by the Attorney General pursuant to KRS Chapter 367. Counsel for all parties appeared for hearing before the Court at 10:00 a.m. on July 15, 2004.

On motion of KU and LG&E and without objection, it is **ORDERED** that civil action



04-CI-970 is consolidated with civil action 04-CI-962.

The PSC asserts that it has exclusive jurisdiction in setting utility rates and the Attorney General is without authority to examine it under the Kentucky Consumer Protection Act, KRS 367.110 *et seq.* A similar claim was made and rejected in *Commonwealth ex rel. Chandier v. Anthem Insurance Companies, Inc.*, Ky.App., 8 S.W.3d 48 (1999), where the Court determined that the filed rate doctrine did not prevent the Attorney General from investigating possible violations of the Consumer Protection Act.

The Attorney General has broad authority in consumer protection matters ranging from enforcement of the Commonwealth's law against deceptive business practices (KRS 367.170) to studying rules, orders, and state policies affecting consumers. KRS 367.150. The PSC, as a state agency, is required to cooperate with the Attorney General in carrying out these functions. KRS 367.160(1). Accordingly, the Court believes the Supreme Court's rationale in *Strong v. Chandler*, Ky., 70 S.W.3d 405(2002), to be applicable in this case. In *Strong v. Chandler* the Supreme Court ruled that the Cabinet for Economic Development had to allow *in camera* inspection of documents so the Attorney General could fulfill his duties as the Commonwealth's chief law officer and as a protector of the state treasury.

The plaintiffs further question the grounds for issuing the subpoenas and investigative demands pursuant to KRS 367.240. The Attorney General has produced some evidence of allegedly improper contact between members of the PSC and their staff and members of the regulated community, including LG&E, as well as with other, non-party members of the regulated community. The Court finds that this evidence is sufficient for the issuance of the investigative demands and subpoenas sought to be quashed. Accordingly, it is **ORDERED** that the emergency petitions of the PSC, LG&E and KU to quash the subpoenas and investigative demands and the motion for temporary

injunction of the PSC are overruled and the Attorney General may proceed to conduct the interviews of PSC current and former employees.

LG&E and KU also requested that the Court modify the investigative demands and extend the time for responding. The Attorney General has indicated his willingness to work with LG&E and KU on these matters and the Court makes no ruling on this request. LG&E and KU may bring their request for modification or extension of time to the attention of the Court if the parties are unable to agree upon the terms.

Dated this 27 day of July, 2004.



JUDGE, FRANKLIN CIRCUIT COURT
DIVISION I

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Louisville, KY 40202-3363
ATTORNEYS FOR LG&E and KU

REPRESENTATIVE LIST OF PSC CALLS TO LGE EMPLOYEES 01/01/03-06/30/04

LAST	FIRST	FROM	DATE	LENGTH	NUMBER	PERSON CALLED	
DORMAN	THOMAS	LAND	01/06/2003	12.30	502-553-0598	GEORGE SIEMENS	CELL
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HUELSMANN	MARTIN	LAND	2/2/2004	4.00	502-553-0598	GEORGE SIEMENS	CELL
HUELSMANN	MARTIN	LAND	2/3/2004	0.12	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	LAND	2/4/2004	1.06	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	LAND	2/4/2004	0.30	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	CELL-INC.	2/4/2004	15.00	502-553-0598	GEORGE SIEMENS	CELL
HUELSMANN	MARTIN	LAND	2/5/2004	6.24	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	CELL	2/5/2004	2.00	502-553-0598	GEORGE SIEMENS	CELL
HUELSMANN	MARTIN	LAND	2/6/2004	8.06	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	LAND	2/9/2004	0.30	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	LAND	2/9/2004	2.48	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	LAND	2/11/2004	5.36	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	CELL-INC.	2/11/2004	1.00	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	LAND	2/12/2004	0.18	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	LAND	2/13/2004	3.54	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	LAND	2/13/2004	0.12	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	LAND	2/13/2004	6.36	502-553-0598	GEORGE SIEMENS	CELL
HUELSMANN	MARTIN	LAND	2/17/2004	0.12	502-553-0598	GEORGE SIEMENS	CELL
HUELSMANN	MARTIN	LAND	2/17/2004	0.06	502-553-0598	GEORGE SIEMENS	CELL
HUELSMANN	MARTIN	LAND	2/17/2004	3.36	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	LAND	2/17/2004	0.30	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	CELL	2/17/2004	1.00	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	CELL-INC.	2/17/2004	4.00	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	LAND	2/18/2004	3.06	502-553-0598	GEORGE SIEMENS	CELL
GILLIS	GARY	CELL	2/18/2004	1.00	502-553-0598	GEORGE SIEMENS	CELL
GILLIS	GARY	CELL	2/18/2004	1.00	502-553-0598	GEORGE SIEMENS	CELL
GILLIS	GARY	CELL	2/18/2004	1.00	502-553-0598	GEORGE SIEMENS	CELL
GILLIS	GARY	CELL	2/18/2004	2.00	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	CELL-INC.	2/19/2004	2.00	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	CELL-INC.	2/20/2004	1.00	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	CELL-INC.	2/20/2004	5.00	502-553-0598	GEORGE SIEMENS	CELL
GILLIS	GARY	CELL	2/21/2004	12.00	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	CELL-INC.	2/23/2004	1.00	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	CELL	2/24/2004	1.00	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	CELL-INC.	2/26/2004	7.00	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	CELL-INC.	2/26/2004	8.00	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	CELL-INC.	3/1/2004	1.00	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	CELL	3/4/2004	3.00	502-553-0598	GEORGE SIEMENS	CELL
HUELSMANN	MARTIN	LAND	3/4/2004	0.18	502-553-0598	GEORGE SIEMENS	CELL
RAFF	RICHARD	LAND	3/5/2004	1.36	502-553-0598	GEORGE SIEMENS	CELL
RAFF	RICHARD	LAND	3/5/2004	15.36	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	CELL-INC.	3/5/2004	7.00	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	CELL-INC.	3/5/2004	2.00	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	CELL	3/5/2004	1.00	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	CELL	3/7/2004	1.00	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	CELL	3/8/2004	3.00	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	CELL	3/9/2004	3.00	502-553-0598	GEORGE SIEMENS	CELL

DORMAN	THOMAS	CELL	3/9/2004	5.00	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	CELL	3/10/2004	6.00	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	CELL	3/10/2004	5.00	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	CELL	3/10/2004	3.00	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	CELL-INC.	3/15/2004	6.00	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	CELL-INC.	3/17/2004	2.00	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	CELL	3/19/2004	4.00	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	CELL-INC.	3/23/2004	5.00	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	CELL	3/23/2004	1.00	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	CELL	3/23/2004	1.00	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	CELL-INC.	3/23/2004	1.00	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	CELL-INC.	3/29/2004	1.00	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	CELL	4/29/2004	1.00	502-553-0598	GEORGE SIEMENS	CELL
DORMAN	THOMAS	LAND	5/12/2004	0.06	502-553-0598	GEORGE SIEMENS	CELL
HUELSMANN	MARTIN	LAND	5/13/2004	5.30	502-553-0598	GEORGE SIEMENS	CELL
HUELSMANN	MARTIN	LAND	6/10/2004	3.00	502-553-0598	GEORGE SIEMENS	CELL
RAFF	RICHARD	LAND	1/6/2004	0.36	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	1/8/2004	4.00	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	1/16/2004	8.42	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	1/20/2004	4.36	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	1/21/2004	6.24	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	1/23/2004	1.00	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	1/29/2004	34.24	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	1/30/2004	2.54	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	1/30/2004	0.24	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	2/2/2004	0.54	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	2/10/2004	38.36	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	2/12/2004	10.24	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	2/13/2004	1.18	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	2/19/2004	0.24	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	2/20/2004	0.30	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	2/24/2004	1.12	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	3/4/2004	13.48	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	3/11/2004	10.06	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	3/11/2004	9.24	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	3/17/2004	23.48	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	3/18/2004	0.30	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	3/18/2004	1.24	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	3/25/2004	8.24	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	4/9/2004	0.54	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	4/12/2004	0.54	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	4/13/2004	16.36	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	4/13/2004	0.12	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	4/13/2004	13.42	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	4/20/2004	13.12	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	4/27/2004	6.36	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	5/3/2004	2.00	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	5/3/2004	12.24	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	5/11/2004	3.12	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	5/12/2004	0.24	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	5/13/2004	16.00	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	5/21/2004	1.06	502-582-1601	OGDEN, NEWELL & WELCH PLLC	

RAFF	RICHARD	LAND	6/2/2004	18.42	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	6/4/2004	0.30	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	6/4/2004	0.06	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	6/8/2004	0.54	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	6/14/2004	1.00	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	6/15/2004	1.48	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	6/17/2004	2.12	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	6/17/2004	0.12	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	6/18/2004	1.36	502-582-1601	OGDEN, NEWELL & WELCH PLLC	
RAFF	RICHARD	LAND	8/11/2003	8.54	502-627-2143	ROGER HICKMAN	
SPURLIN	ROBERT	LAND	01/02/2003	0.42	502-627-2323	GEORGE SIEMENS	
SPURLIN	ROBERT	LAND	01/03/2003	0.24	502-627-2323	GEORGE SIEMENS	
SPURLIN	ROBERT	LAND	01/03/2003	4.12	502-627-2323	GEORGE SIEMENS	
HUELSMANN	MARTIN	LAND	01/10/2003	0.12	502-627-2323	GEORGE SIEMENS	
SPURLIN	ROBERT	LAND	01/13/2003	16.42	502-627-2323	GEORGE SIEMENS	
HUELSMANN	MARTIN	LAND	01/29/2003	0.48	502-627-2323	GEORGE SIEMENS	
RAFF	RICHARD	LAND	03/04/2003	1.30	502-627-2323	GEORGE SIEMENS	
HUELSMANN	MARTIN	LAND	03/18/2003	0.12	502-627-2323	GEORGE SIEMENS	
AMATO	ROBERT	LAND	03/19/2003	2.00	502-627-2323	GEORGE SIEMENS	
HUELSMANN	MARTIN	LAND	03/24/2003	0.06	502-627-2323	GEORGE SIEMENS	
HUELSMANN	MARTIN	LAND	04/29/2003	0.18	502-627-2323	GEORGE SIEMENS	
GILLIS	GARY	LAND	05/20/2003	0.12	502-627-2323	GEORGE SIEMENS	
DORMAN	THOMAS	CELL	6/6/2003	1.00	502-627-2323	GEORGE SIEMENS	
DORMAN	THOMAS	LAND	06/13/2003	14.18	502-627-2323	GEORGE SIEMENS	
HUELSMANN	MARTIN	LAND	7/15/2003	0.42	502-627-2323	GEORGE SIEMENS	
HUELSMANN	MARTIN	LAND	7/23/2003	1.00	502-627-2323	GEORGE SIEMENS	
DORMAN	THOMAS	LAND	7/25/2003	1.24	502-627-2323	GEORGE SIEMENS	
DORMAN	THOMAS	LAND	7/25/2003	0.30	502-627-2323	GEORGE SIEMENS	
HUELSMANN	MARTIN	LAND	8/18/2003	9.30	502-627-2323	GEORGE SIEMENS	
DORMAN	THOMAS	LAND	8/25/2003	0.42	502-627-2323	GEORGE SIEMENS	
HUELSMANN	MARTIN	LAND	9/30/2003	9.06	502-627-2323	GEORGE SIEMENS	
HUELSMANN	MARTIN	LAND	10/16/2003	0.12	502-627-2323	GEORGE SIEMENS	
DORMAN	THOMAS	CELL	10/17/2003	4.00	502-627-2323	GEORGE SIEMENS	
GILLIS	GARY	LAND	10/24/2003	0.06	502-627-2323	GEORGE SIEMENS	
GILLIS	GARY	LAND	10/31/2003	0.24	502-627-2323	GEORGE SIEMENS	
HUELSMANN	MARTIN	LAND	11/20/2003	0.24	502-627-2323	GEORGE SIEMENS	
HUELSMANN	MARTIN	LAND	11/20/2003	0.06	502-627-2323	GEORGE SIEMENS	
HUELSMANN	MARTIN	LAND	11/24/2003	0.12	502-627-2323	GEORGE SIEMENS	
HUELSMANN	MARTIN	LAND	11/24/2003	2.06	502-627-2323	GEORGE SIEMENS	
GILLIS	GARY	LAND	11/25/2003	0.18	502-627-2323	GEORGE SIEMENS	
DORMAN	THOMAS	LAND	12/2/2003	9.12	502-627-2323	GEORGE SIEMENS	
HUELSMANN	MARTIN	LAND	1/14/2004	0.24	502-627-2323	GEORGE SIEMENS	
RAFF	RICHARD	LAND	3/4/2004	0.24	502-627-2323	GEORGE SIEMENS	
RAFF	RICHARD	LAND	3/5/2004	0.12	502-627-2323	GEORGE SIEMENS	
HUELSMANN	MARTIN	LAND	4/8/2004	0.12	502-627-2323	GEORGE SIEMENS	
HUELSMANN	MARTIN	LAND	4/27/2004	0.36	502-627-2323	GEORGE SIEMENS	
DORMAN	THOMAS	LAND	4/27/2004	0.06	502-627-2323	GEORGE SIEMENS	
DORMAN	THOMAS	LAND	4/27/2004	7.36	502-627-2323	GEORGE SIEMENS	
O'DONNELL	BETH	LAND	6/3/2004	0.42	502-627-2323	GEORGE SIEMENS	
O'DONNELL	BETH	LAND	6/23/2004	19.42	502-627-2323	GEORGE SIEMENS	
DORMAN	THOMAS	LAND	10/21/2003	1.36	502-627-2340	DONNA LEWIS	
RAFF	RICHARD	LAND	01/07/2003	0.48	502-627-2557	LAW DEPT.	

RAFF	RICHARD	LAND	01/10/2003	6.24	502-627-2557	LAW DEPT.	
RAFF	RICHARD	LAND	04/10/2003	0.36	502-627-2557	LAW DEPT.	
RAFF	RICHARD	LAND	04/10/2003	1.54	502-627-2557	LAW DEPT.	
RAFF	RICHARD	LAND	04/14/2003	20.00	502-627-2557	LAW DEPT.	
RAFF	RICHARD	LAND	04/15/2003	1.06	502-627-2557	LAW DEPT.	
RAFF	RICHARD	LAND	05/19/2003	1.30	502-627-2557	LAW DEPT.	
RAFF	RICHARD	LAND	05/21/2003	1.18	502-627-2557	LAW DEPT.	
RAFF	RICHARD	LAND	7/22/2003	1.06	502-627-2557	LAW DEPT.	
RAFF	RICHARD	LAND	7/24/2003	1.00	502-627-2557	LAW DEPT.	
RAFF	RICHARD	LAND	10/31/2003	1.54	502-627-2557	LAW DEPT.	
RAFF	RICHARD	LAND	10/31/2003	0.06	502-627-2557	LAW DEPT.	
RAFF	RICHARD	LAND	12/1/2003	0.54	502-627-2557	LAW DEPT.	
RAFF	RICHARD	LAND	2/2/2004	0.06	502-627-2557	LAW DEPT.	
RAFF	RICHARD	LAND	2/23/2004	0.54	502-627-2557	LAW DEPT.	
RAFF	RICHARD	LAND	6/9/2004	0.24	502-627-2561	DORTHY O'BRIEN	
CONFERENCE RM. #1		LAND	5/12/2004	51.24	502-627-2648	STEVE PHILLIPS	
AMATO	ROBERT	LAND	03/19/2003	1.18	502-627-2824	MARK JACKSON	
AMATO	ROBERT	LAND	03/20/2003	9.18	502-627-2824	MARK JACKSON	
RAFF	RICHARD	LAND	7/10/2003	0.30	502-627-2903	DEBBIE ABERNATHY	
RAFF	RICHARD	LAND	03/14/2003	5.24	502-627-3188	ROGER HICKMAN	
GILLIS	GARY	LAND	01/09/2003	0.12	502-627-3547	MIKE BEER	
DORMAN	THOMAS	LAND	02/04/2003	9.18	502-627-3547	MIKE BEER	
HUELSMANN	MARTIN	LAND	02/19/2003	1.18	502-627-3547	MIKE BEER	
DORMAN	THOMAS	LAND	02/27/2003	4.54	502-627-3547	MIKE BEER	
DORMAN	THOMAS	LAND	02/28/2003	9.06	502-627-3547	MIKE BEER	
AMATO	ROBERT	LAND	04/04/2003	1.24	502-627-3547	MIKE BEER	
RAFF	RICHARD	LAND	05/15/2003	1.42	502-627-3547	MIKE BEER	
RAFF	RICHARD	LAND	7/2/2003	0.24	502-627-3547	MIKE BEER	
RAFF	RICHARD	LAND	7/3/2003	0.06	502-627-3547	MIKE BEER	
GILLIS	GARY	LAND	7/9/2003	0.48	502-627-3547	MIKE BEER	
AMATO	ROBERT	LAND	7/29/2003	1.36	502-627-3547	MIKE BEER	
DORMAN	THOMAS	LAND	8/5/2003	0.12	502-627-3547	MIKE BEER	
RAFF	RICHARD	LAND	8/7/2003	0.30	502-627-3547	MIKE BEER	
RAFF	RICHARD	LAND	8/12/2003	0.30	502-627-3547	MIKE BEER	
DORMAN	THOMAS	LAND	8/19/2003	0.12	502-627-3547	MIKE BEER	
DORMAN	THOMAS	LAND	8/19/2003	8.36	502-627-3547	MIKE BEER	
AMATO	ROBERT	LAND	8/22/2003	1.42	502-627-3547	MIKE BEER	
HUELSMANN	MARTIN	LAND	9/12/2003	3.54	502-627-3547	MIKE BEER	
AMATO	ROBERT	LAND	10/3/2003	1.18	502-627-3547	MIKE BEER	
GILLIS	GARY	LAND	10/31/2003	0.36	502-627-3547	MIKE BEER	
GILLIS	GARY	LAND	10/31/2003	0.18	502-627-3547	MIKE BEER	
AMATO	ROBERT	LAND	12/5/2003	1.18	502-627-3547	MIKE BEER	
RAFF	RICHARD	LAND	12/10/2003	2.12	502-627-3547	MIKE BEER	
RAFF	RICHARD	LAND	12/11/2003	0.48	502-627-3547	MIKE BEER	
AMATO	ROBERT	LAND	12/16/2003	1.12	502-627-3547	MIKE BEER	
AMATO	BOB	LAND	1/7/2004	0.42	502-627-3547	MIKE BEER	
AMATO	BOB	LAND	1/21/2004	3.24	502-627-3547	MIKE BEER	
RAFF	RICHARD	LAND	1/27/2004	0.06	502-627-3547	MIKE BEER	
RAFF	RICHARD	LAND	1/28/2004	1.06	502-627-3547	MIKE BEER	
DORMAN	THOMAS	LAND	1/29/2004	0.12	502-627-3547	MIKE BEER	
RAFF	RICHARD	LAND	1/29/2004	0.06	502-627-3547	MIKE BEER	
DORMAN	THOMAS	LAND	2/4/2004	0.54	502-627-3547	MIKE BEER	

AMATO	BOB	LAND	2/6/2004	9.50	502-627-3547	MIKE BEER	
RAFF	RICHARD	LAND	2/19/2004	0.54	502-627-3547	MIKE BEER	
RAFF	RICHARD	LAND	2/23/2004	0.42	502-627-3547	MIKE BEER	
RAFF	RICHARD	LAND	4/9/2004	0.18	502-627-3547	MIKE BEER	
RAFF	RICHARD	LAND	4/16/2004	4.48	502-627-3547	MIKE BEER	
AMATO	BOB	LAND	4/27/2004	0.48	502-627-3547	MIKE BEER	
RAFF	RICHARD	LAND	6/9/2004	1.30	502-627-3547	MIKE BEER	
AMATO	BOB	LAND	6/16/2004	0.42	502-627-3547	MIKE BEER	
RAFF	RICHARD	LAND	03/03/2003	7.42	502-627-3665	JOHN MCCALL	
DORMAN	THOMAS	LAND	04/17/2003	3.30	502-627-3665	JOHN MCCALL	
GOSS	MARK	LAND	6/30/2004	2.24	502-627-3912	VIC STAFFIERI	
DORMAN	THOMAS	LAND	7/16/2003	0.12	502-627-4110	JOHN WOLFRAM	
RAFF	RICHARD	LAND	5/25/2004	0.06	502-627-4110	JOHN WOLFRAM	
RAFF	RICHARD	LAND	5/27/2004	2.42	502-627-4110	JOHN WOLFRAM	
AMATO	BOB	LAND	6/25/2004	13.06	502-627-4110	JOHN WOLFRAM	
RAFF	RICHARD	LAND	04/17/2003	0.06	502-627-4136	HOWARD BUSH	
RAFF	RICHARD	LAND	8/8/2003	0.06	502-627-4136	HOWARD BUSH	
HUELSMANN	MARTIN	LAND	6/2/2004	28.30	859-231-8780	McBrayer, McGinnis, Leslie & Kirkland	