

Commonwealth of Kentucky
Before the Public Service Commission

RECEIVED

AUG 27 2007
PUBLIC SERVICE
COMMISSION

In the Matter of:

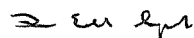
THE APPLICATION OF KENTUCKY-AMERICAN)
WATER COMPANY FOR A CERTIFICATE OF) Case No. 2007-00134
CONVENIENCE AND NECESSITY AUTHORIZING)
THE CONSTRUCTION OF KENTUCKY RIVER)
STATION II, ASSOCIATED FACILITIES AND)
TRANSMISSION MAIN)

ATTORNEY GENERAL'S RESPONSE TO
CITIZENS FOR ALTERNATIVE WATER SOLUTIONS'
DATA REQUEST TO
THE OFFICE OF THE ATTORNEY GENERAL

The Attorney General submits his Response to the Citizens for Alternative
Water Solutions' Data Request.

Respectfully submitted,

GREGORY D. STUMBO
ATTORNEY GENERAL



David Edward Spenard
Dennis G. Howard, II
Assistant Attorneys General
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601-8204
T 502 696-5457
F 502-573-8315

Notice of Filing and Certificate of Service

Counsel gives notice that the original and eight photocopies of the Attorney General's Response were filed by hand delivery to Beth O'Donnell, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601. Counsel also certifies service of this document by mailing a true and correct photocopy of the same, first class postage prepaid, to the parties of record. Filing and service took place this 27th day of August, 2007.

Lindsey W. Ingram, Jr.
Lindsey W. Ingram III
Stoll Keenon Ogden
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507-1801
(Counsel for Kentucky-American Water);

Damon R. Talley
P. O. Box 150
Hodgenville, Kentucky 42748
(Counsel for Bluegrass Water Supply Commission);

David Barberie
Lexington-Fayette Urban County Government, Department of Law
200 East Main Street
Lexington, Kentucky 40507
(Counsel for LFUCG);

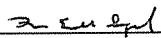
David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street
2110 CBLD Building
Cincinnati, Ohio 45202
(Counsel for KIUC);

Thomas J. FitzGerald
Kentucky Resources Council, Inc.
P. O. Box 1070
Frankfort, Kentucky 40602
(Counsel for Citizens for Alternative Water Solutions – CAWS);

Kentucky River Authority
ATTN: Stephen Reeder, Director
70 Wilkinson Boulevard
Frankfort, Kentucky 40601; and

Barbara K. Dickens
Louisville Water Company
550 South Third Street
Louisville, Kentucky 40202

John E. Selent
Edward T. Depp
Dinsmore & Shohl LLP
1400 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
(Counsel for Louisville Water Company)



Assistant Attorney General

Data Request No. 1

Has the OAG adopted a formal position concerning whether the Public Service Commission (PSC) should issue the Certificate of Public Convenience and Necessity (CPCN) requested by Kentucky American Water Company (KAWC) in this case?

- a. If so, what is that position?
- b. Please provide all studies, reports, analyses, and other bases relied upon in support of that position. To the extent that those documents are already of record in this proceeding, a reference to the title, author and date of the document will be sufficient.

Answer:

Response by the Office of the Attorney General: Yes.

- a. The Attorney General is sponsoring the testimony of Scott J. Rubin, and the Attorney General adopts and supports Mr. Rubin's position on the question of whether the Commission should issue a Certificate.
- b. Mr. Rubin's pre-filed testimony identifies the support for his position.

Data Request No. 2

Please provide the criteria and / or standards against which the OAG measured the KAWC Pool 3 Project, and whether the OAG has conducted similar assessments using the same criteria or standards for other alternatives that would meet the supply or treatment needs intended to be addressed by the Pool 3 Project?

Answer:

The criteria and standards used by the OAG are whether the proposed project appears to be in the public interest, including whether the proposed project consistent with the provision of reasonably least-cost, efficient, safe, reliable, and affordable service to KAWC's customers. The OAG conducted a similar assessment of the proposed pipeline to Louisville Water Company in 1999.

Data Request No. 3

Please explain in detail the “aggressive conservation” measures KAWC could implement and the basis of your opinion that these efforts would not reduce KAWC’s source of supply deficit. Please provide references to sources of further information that were relied upon by the OAG concerning aggressive conservation programs and communities that have exemplary conservation programs.

Answer:

Mr. Rubin has not developed a specific conservation program for KAWC and did not refer to specific sources of information specifically for this case. He is generally aware of the types of aggressive conservation that have been used at other water utilities, including for example: appliance and plumbing fixture rebates, coupons, and trade ally programs; xeriscape programs; conservation pricing; water budget pricing; targeted commercial and industrial programs; golf course and other irrigation restrictions (including encouraging / requiring the use of non-potable water); programs targeted to low-income customers and public housing (such as in-home retrofits and leak repairs).

Data Request No. 4

With respect to the Prefiled Direct Testimony of Scott J. Rubin,

a. At Page 3, it is stated that KAWC undertook “reasonable (but by no means extraordinary) efforts” to develop a regional water supply project. To what project is the witness referring, and what measures would have made the effort extraordinary as opposed to “reasonable”?

Answer:

Mr. Rubin is referring to KAWC’s work with the Bluegrass Water Supply Consortium. He has not developed a complete list of what extraordinary efforts might have involved, but they might include, for example, financing substantial portions of the transmission network; working on legislative solutions that would have enabled the establishment of a funded public-private partnership; lending assistance (such as engineering and legal) to the BWSC; working collaboratively to site and design a new project.

b. What is the basis for the assertion that the KAWC supply deficit is “severe?”

Answer:

See Mr. Rubin’s testimony at pages 5-8.

c. Is the witness referring to a raw water deficit, or to a treatment capacity deficit, or both?

Answer:

Mr. Rubin’s primary focus is the raw water deficit. He is aware of the treatment capacity deficit, but if there were an adequate raw water supply, the treatment deficit would be relatively easy and inexpensive to remedy.

d. At Page 4, the witness indicates that further conservation and leak detection programs would not “eliminate KAWC’s source of supply deficit.” Has the witness formulated an opinion as to whether conservation and a leak detection program could

reduce the deficit, and if so, by how much and at what cost? Again, is the witness referring to a raw water deficit or a treatment capacity limitation, and what is the basis for that assumed deficit?

Answer:

Mr. Rubin believes that conservation and leak detection could reduce the deficit, but he has not quantified the achievable reduction or the cost of doing so. Mr. Rubin is focused on the raw water deficit. That deficit is based on the safe yield of KAWC's raw water intake, as specified in its permit from the Kentucky Division of Water.

e. Concerning the recommended cost-cap at P. 4, is there precedent for such a cost-cap in the water utility industry? What has been the experience in such jurisdictions?

Answer:

Mr. Rubin has not fully researched this issue. He is not aware if a cost cap has been used in the water industry. He is familiar with cost caps in the electric utility industry, where to Mr. Rubin's knowledge they have been successful in driving the utility and its contractors to control costs and/or limiting the amount of investment that is included in the utility's rate base.

f. If such a cost cap were applied, is there a possibility that in an effort to minimize costs, KAWC would either shift cost overages or reduce expenditures elsewhere?

Answer:

Reducing expenditures elsewhere would not affect the cost cap. Shifting costs to other projects would be fraudulent. While that could occur, Mr. Rubin does not assume that KAWC would engage in such conduct. He also assumes that if such concerns were raised, the PSC would conduct or require an audit to ensure that no fraudulent activity has occurred.

g. Is there any reason why a cost-cap could not be applied to another alternative, such as the LWC option, to ensure that it would be the "least-cost" option?

Answer:

No, there is no reason why a cost cap could not be applied to another option.

h. On Page 4, while CAWS concurs strongly with the recommendation to hire a qualified conservation consultant, does the OAG believe that best practices for conservation should be required of KAWC only if they can completely eliminate the projected water supply or treated water supply deficit?

Answer:

No.

i. Does the witness and the OAG concur with CAWS that regardless of whether the Pool 3 Project or the Louisville Water Company interconnection or another option is approved by the PSC, that such a recommendation should be imposed by the PSC?

Answer:

Mr. Rubin does not understand the use of the word “imposed” in the question. He does not know if the PSC has the authority to require KAWC to undertake a project that KAWC has not proposed and is not willing to undertake.

j. What explains the fact that water use increases significantly during hot, dry weather? How much can aggressive conservation measures reduce this consumption?

Answer:

Water use increases during hot, dry weather are primarily the result of water used for cooling (in air conditioning systems, for example), water used outdoors (lawn and garden watering, and other forms of irrigation), water used for recreation (such as wading pools, water slides, and sprinklers), water used for sanitation (such as increased incidence of showers and bathing), and increased water loss due to increased water flows in the system. Aggressive conservation measures can reduce some of this consumption, but Mr. Rubin has not quantified the amount of such reduction.

k. Regarding the witness testimony on Page 5, is the “safe yield” reference related to the raw water supply available to the KAWC, or to the treatment capacity of the company? If it is the latter, has the OAG considered the alternative of adding capacity to the existing treatment system rather than construction of a new plant and associated pipeline?

Answer:

The safe yield is a reference to the raw water supply.

l. Again, with reference to the testimony on Page 7, is the witness referring to the raw water availability of KAWC, or to the ability of KAWC to deliver treated water, when referring to “safe yield?”

Answer:

The safe yield is a reference to the raw water supply.

m. Is the “source of supply deficit” to which reference is made on Page 8 raw water, or treatment capacity?

Answer:

The source of supply deficit is a reference to the raw water supply.

n. Please identify the documents referred to in Answer to the question on Line 14 of Page 8.

Answer:

The documents referred to are those provided by KAWC in response to OAG 1 – 1, 1 – 9, 1 – 10, 1 – 11, 1 – 12, 1 – 14, 1 – 16, 1 – 23, and the Gannett Fleming, “Water Supply Study” for Kentucky American Water, March 2007.

o. Referring to Page 9, does the witness believe that the goal of the company should be to “augment its source of supply” or instead to “meet reasonable customer demand” through a combination of reasonable conservation measures, investment in supply and in treatment capacity. Does the witness believe that all reasonable conservation measures have been undertaken by KAWC?

Answer:

Mr. Rubin believes that KAWC’s goal should be to meet its customers’ reasonable demands for water through a cost-effective combination of water supply and treatment, conservation, demand management, and reduction in non-revenue water. Mr. Rubin does not believe that all reasonable conservation measures have been undertaken by KAWC or its customers.

p. Referring again to Page 9, has the witness evaluated whether demand management could reduce KAWC’s deficit? If so, what measures, and by how much, and at what cost? If not, why not? Does the witness believe that the only conservation measures that should be undertaken are those that, individually or collectively, will eliminate the deficit?

Answer:

Mr. Rubin has not evaluated specific demand management or conservation measures for KAWC. Based on the size of the raw water supply deficit, Mr. Rubin does not believe that such measures could obviate the need for a supply augmentation project, and it appears that that the supply cannot be augmented in Pool 9 of the Kentucky River. No, Mr. Rubin would encourage undertaking cost-effective conservation measures, without regard to their ability to individually or collectively eliminate the deficit.

q. Could investment in conservation, and including the lessening of non-revenue water loss, allow KAWC to delay needed augmentation of raw water supply or treatment capacity until additional supply were created through installation of gates on the dam that impounds the existing KAWC supply?

Answer:

No. This was a possibility in the 1990s when Mr. Rubin proposed it, but the growth and economic development in KAWC's service area since that time has increased even average demand to the point where it exceeds the safe yield of KAWC's raw water supply.

r. Did the witness consider the information supplied by the Louisville Water Company in response to the Open records Act Request filed by Commission staff, in development of the prefiled testimony and in arriving at the conclusions stated therein?

Answer:

No. Mr. Rubin had not seen the documents from Louisville Water Company before his testimony was prepared. However, he had separately seen some of the documents that were later provided by LWC. Mr. Rubin has subsequently reviewed those documents and they do not change his conclusions and recommendations.

s. With reference to the statement on Page 14 that it is "difficult to assess with any accuracy" how the cost would compare with the Pool 3 Project, did the witness or the OAG inquire of the LWC where the projected terminus of the system was and would be under existing plans?

Answer:

No.

t. Is the witness aware of whether KAWC has requested a current proposal from LWC to meet water needs?

Answer:

Mr. Rubin has not seen any such request.

u. In making a comparison between the two proposals (Pool 3 Project v. Louisville Water Company pipeline), did the witness consider the additional incremental costs of increasing supply from LWC as opposed to building a second raw water pipeline from the Ohio River once the withdrawals from Pool 3 approved available water?

Answer:

Mr. Rubin does not consider the LWC pipeline to be a comparable proposal. He did not consider the highly speculative need for additional water decades in the future beyond the amount that would be provided by the Pool 3 project.

v. If the basis for comparing the proposals from KAWC and LWC is unreliable due to uncertainties in the costs of an LWC option, how can the witness conclude that the LWC proposal would be more costly? What efforts were made to obtain reliable and current data regarding the LWC option?

Answer:

Mr. Rubin does not conclude that the LWC proposal “would be” more costly. He states: “I conclude, therefore, that it is not possible to accurately assess whether the Pool 3 Project is more expensive than the LWC pipeline option. There is a great deal of uncertainty about the actual cost and feasibility of an LWC pipeline. It appears, however, that the Pool 3 Project and LWC pipeline are likely to be fairly close in cost in the early years, with the LWC pipeline becoming more expensive as KAWC needs more water. Given the need for KAWC to do something immediately, it is my opinion that it is reasonable for KAWC to undertake the Pool 3 Project, so long as certain conditions are met.”

w. Has the OAG made public statements concerning whether the KAWC request for a CPCN should be approve? Please explain the basis for such a recommendation, in light of the unavailability of current and reliable data concerning the Louisville Water Company finished-water option.

Answer:

Response by the Office of the Attorney General: Yes. The Office of the Attorney General is sponsoring the testimony of Scott J. Rubin, and the Attorney General adopts and supports Mr. Rubin's position on the question of whether the Commission should issue a certificate. The Office of the Attorney General issued a press release on 30 July 2007 announcing the filing of Mr. Rubin's testimony. The basis for Mr. Rubin's position is set forth in his testimony.

x. If LWC is correct that the cost for a pipeline to connect their system to Fayette County's water system would be \$56 million, would this affect AG's analysis of the cost-effectiveness of the LWC option? Would that then be the preferred option, or are there other criteria that the OAG is utilizing to select what it believes is the preferred option?

Answer:

Mr. Rubin would require substantially more information than just the cost of pipeline construction to determine whether it would change his opinion.

y. Did the witness, and / or the OAG, conclude that the KAWC option was preferable to the LWC option before, or after, consideration of the data provided by LWC in response to the Open Records Request filed by the Commission? Before or after any responses to Open Record Act Requests served by the OAG?

Answer:

Due to the schedule in this case, the determination was made before consideration of the data provided by LWC. Mr. Rubin has subsequently reviewed that information and it does not change his conclusions and recommendations.

z. LWC has proposed 42 miles of 36" main for \$56 million (\$1.33 million/mile), yet the witness' analysis assumes 50 miles of pipeline at \$2.5 million/mile, for a total cost of \$125 million. Assuming the costs and distance presented by the LWC are valid, would that change the witness' conclusion concerning the least-cost option?

Answer:

If LWC's cost represented the complete cost (comparable to KAWC's cost estimate), then it might affect Mr. Rubin's opinion. However, it does not appear that LWC's cost represents the entire cost to connect the KAWC system to the LWC system.

aa. On Page 21, why does the witness assume that the price of LWC water would increase as KAWC's demand for water increases?

Answer:

The assumption is based on the structure of the 1998 contract between KAWC and LWC and the pricing terms outlined in the presentation from LWC to LFUCG in July 2007.

bb. Did the witness take into consideration any public testimony made by the LWC, specifically the 7/10/2007 testimony of the LWC before the LFUCC where they stated with reasonable certainty that at connection between KAW and the LWC would cost \$56 M?

Answer:

Yes

Data Request No. 5

Please explain in detail whether (and why) you believe that the impending initial public offering (“IPO”) of the parent company of KAWC will be positively affected if KAWC secures the CPCN being sought.

Answer:

Mr. Rubin has no opinion about the relationship, if any, between the impending IPO of American Water Works Company and this case.

Data Request No. 6

Please explain in detail whether (and why) you believe that the impending IPO of the parent company of KAWC will be adversely affected if KAWC does not secure the CCPN being sought and/or is, instead, forced to meet its water supply needs by some other means, such as purchasing its water wholesale from LWC.

Answer:

Mr. Rubin has no opinion about the relationship, if any, between the impending IPO of American Water Works Company and this case.

Data Request No. 7

Please describe in detail any effect upon KAWC's future earnings that you anticipate may materialize if its application for a CPCN is granted?

Answer:

If the CPCN is granted and a cost cap is imposed as Mr. Rubin recommends, and if KAWC constructs the project without exceeding the cost cap, then KAWC's future earnings would increase as it receives a return on its capital investment in the supply project. If KAWC cannot construct the project without exceeding the cost cap, then KAWC's future earnings might be negatively affected.

If the CPCN is granted and a cost cap is not imposed and if all of KAWC's expenditures on the project are found to be reasonably and prudently incurred, then KAWC's future earnings would increase as it receives a return on its prudently incurred capital investment in the supply project. If some of KAWC's investment is found not to be reasonably and prudently incurred, then KAWC's future earnings might be negatively affected.

Data Request No. 8

Please describe in detail whether (and why) you believe that the IPO of KAWC's parent company may be more successful if KAWC is permitted to satisfy the water needs of its service territory by implementing the Pool 3 Project.

Answer:

Mr. Rubin has no opinion about the relationship, if any, between the impending IPO of American Water Works Company and this case.