

# Kentucky Resources Council, Inc.

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**RECEIVED**

**MAY 03 2007**

**PUBLIC SERVICE  
COMMISSION**

May 2, 2007

Docket Coordinator  
Public Service Commission  
211 Sower Boulevard  
Frankfort, Kentucky 40601

Re: Case No 2007-00134

In the Matter of the Application of Kentucky-American Water Company  
for a Certificate of Convenience And Necessity Authorizing The Construction  
of Kentucky River Station II, Associated facilities And Transmission  
Main

Dear Docket Clerk:

Enclosed please find for filing the original and ten (10) copies of a motion by Citizens for Alternative Water Solutions (CAWS) for full intervention in the above captioned matter. Copies have been served on the listed counsel.

Thanks for your assistance in advance.

Cordially,



Tom FitzGerald  
Counsel for Movant for Intervention  
Citizens for Alternative Water Solutions

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MAY 03 2007

PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

**MOTION OF CITIZENS FOR ALTERNATIVE WATER SOLUTIONS  
("CAWS") FOR FULL INTERVENTION**

Come the "Citizens for Alternative Water Solutions," (CAWS), by counsel, on behalf of members who are directly and adversely affected by the request, and move to intervene in the above-captioned proceeding as a full party. Pursuant to 807 KAR 5:001 Section 3(8), CAWS respectfully requests that it be accorded the rights and privileges of a full intervenor in these proceedings, and in support thereof, states as follows:

1. Intervention in formal proceedings before the Kentucky Public Service Commission (Commission) is governed by 807 Kentucky Administrative Regulation (KAR) 5:001 Section 3(8), which provides in relevant part that:

In any formal proceeding, any person who wishes to become a party to a proceeding before the Commission may by timely motion request that he be granted leave to intervene. Such motion shall include his name and address and the name and address of any party he represents and in what capacity he is employed by such party.

807 KAR 5:001 Section 3(8).

2. This proceeding, which involves the application of Kentucky-American Water Company (KAWC) for a certificate of public convenience and necessity authorizing the construction of Kentucky River Station II, associate facilities and transmission main, was initiated by application filed under KRS 278.020 and is a “formal proceeding” within the meaning of 807 KAR 5:001 Section 3(8).

3. Citizens for Alternative Water Solutions (CAWS) is a non-profit corporation in good standing, organized under the laws of the Commonwealth of Kentucky, with its principal office at 2390 Sullivan Lane in Frankfort, Kentucky 40601, and dedicated to development of environmentally sound, fiscally responsible and socially just solutions to Central Kentucky’s water needs.

4. This motion for full intervention is timely, within the meaning of 807 KAR 5:001 Section 3(8). The Procedural Schedule adopted by the Commission and attached as Appendix A to the Order entered on April 20, 2007 did not include a deadline for intervention. The motion is filed within 33 days after the filing of the application by Kentucky-American Water Company, and before the first deadline established by the Procedural Schedule, which is for service of initial requests for information upon Kentucky-American Water Company by “all parties and Commission Staff[.]”

5. CAWS will serve and tender for filing, on May 7, 2007, proposed requests for information from CAWS to Kentucky-American, thus meeting the first step of the schedule. There is thus no prejudice to the applicant from the grant of full intervention rights to CAWS.<sup>1</sup>

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<sup>1</sup> Counsel believes it appropriate to advise the Commission that, in light of the significance of this case, the importance of judicious and thorough exploration and analysis of alternatives that will best meet the needs

CAWS will also file any response within the time provided by the Order, to the Commission's *sua sponte* April 26, 2007 Order incorporating into the record of this proceeding, the record of Cases No. 1993-00434 and 2001-00117.

6. The grant of intervention to a person pursuant to 807 KAR 5:001 Section 3(8) is within the sound discretion of the Commission, and requires that the person "specify his interest in the proceeding."

7. According to the mission statement adopted by the Board of CAWS, the organization supports "the search for solutions that will have the least overall impacts on the communities and cultural and ecological resources of the region. CAWS was formed to oppose the proposed construction of a water treatment plant at Pool 3 in Owen County and the 30-mile pipeline that would connect this treatment plant to Kentucky American Water (KAW) Company's water system in Fayette County. We believe that there are alternatives to this project [that] are better for KAW's ratepayers, the residents of central Kentucky, and the environment." CAWS interest includes both property interests, and interests in assuring safe and dependable water supplies at a reasonable cost to ratepayers.

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of KAWC's customer base for a safe, dependable and affordable water supply, and the Commission's announced intention to explore the "extent of Kentucky-American's current supply deficit and the feasibility and adequacy of the potential solutions to such deficit" in this new docket, (April 19 Order) CAWS believes that the April 20 Order granting KAWCs motion for an expedited procedural schedule should likely be reconsidered, and CAWS may move the Commission to rehear or reconsider that Order. Similarly, CAWS is concerned that the Order allowing deviation from the requirement of 807 KAR 5:001 Section 9(2)(b) will result in this proceeding moving forward in the absence of and without prior consideration by the appropriate agencies (including the Kentucky Division of Water and U.S. Army Corps of Engineers) of the ecologic and water resources implications of the proposed project, and of the existence and feasibility of alternatives that would have less effect on waters of the Commonwealth. CAWS may request that the April 13, 2007 Order likewise be reconsidered in order to assure that thorough assessment of alternatives precedes expenditure of funds towards implementation of KAWC's announced preferred alternative.

8. CAWS membership includes, but is not limited to, individuals who are ratepayers of Kentucky-American Water Company. Among those individuals are: David Butler, a resident of Lexington, Kentucky residing at 210 Ridgeway Road, Lexington, Kentucky 40502, (859)-509-4048 and owner of a small internet consulting business. Mr. Butler, as both a residential customer and small business owner who is a KAWC ratepayer has an interest in a safe and dependable supply of water for drinking and other beneficial uses, and to the extent that the Kentucky- American Water Company proposal does not represent the most reasonable low-cost option, considering both capital and other costs, for a safe and dependable water supply, Mr. Butler will be adversely affected and aggrieved both as a residential customer and small business owner in Lexington. Mr. Butler is a member of CAWS, and CAWS has standing to represent the interests of Mr. Butler and other CAWS members who are KAWC ratepayers in this proceeding on the issue of whether the KAWC proposal is the most reasonable and the lowest-cost alternative for meeting the water supply needs of KAWC's customers.

9. Additionally, CAWS members include numerous individuals whose properties lie in the direct path of Kentucky-American's announced preferred route for the transmission main from the proposed Kentucky River Station II; many of whom have received letters addressed to "Dear Property Owner" and authored by Project Delivery and Developer Services Manager for KAWC, Linda Bridwell. The KAWC has already approached these CAWS members who are property owners along the proposed route is clear indication from the applicant itself that these property owners have a "special interest" to protect in this proceeding – an interest that includes, among other things, avoiding the

wasteful duplication of new transmission lines and service facilities where more reasonable lower cost, safe and dependable water supply solutions exist. Those CAWS members with property interests directly affected by the proposed route include:

Teddy Greathouse, 1622 Moores Mill Road, Midway, Kentucky 40347

Rick Wallin, 4610 West Ironworks Pike, Georgetown, Kentucky 40324

Mr. and Mrs. Dietrich Felgendreher, 6708 Georgetown Road, Midway, Kentucky 40347

Pat Whitley, 120 Stamping Ground Road, Frankfort, Kentucky 40601

Beulah Bowman, 1942 Jones Lane, Frankfort, Kentucky 40601

Lois Barnes, 5174 Rocky Branch, Frankfort, Kentucky 40601

Lee Troutwine, 6057 Peaks Mill Road, Frankfort, Kentucky 40601

The property interests of these members of CAWS are plainly sufficient to support the representational standing of CAWS on their behalf, and are interests distinct from those of existing parties and other movants for intervention.

10. Existing parties to the proceeding do not adequately represent the interests of CAWS and its members. No current party represents the specific interests of affected landowners or residential ratepayers, and the general statutory authority and interest of the Attorney General's office is distinct from the specific interests of CAWS, a non-governmental nonprofit organization. The interests of Lexington's government and of the Bluegrass Water Supply Commission are similarly distinct from and non-representative of those of CAWS and its' members.

11. 807 KAR 5:001 Section 1(8)(b) provides in the alternative that the Commission shall grant full intervention status if the person "has a special interests in the proceeding which is not otherwise adequately represented" or "that full intervention by party (sic) is

likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings[.]” The special interests of CAWS and its members are squarely within the ambit of the Commission’s jurisdiction and this proceeding and are not adequately represented, as discussed above. Alternatively, full intervention should be granted since the participation of CAWS would assist the commission in fully considering the matter without unduly complicating or disrupting the proceeding. CAWS believes that other more reasonable, more cost-effective, and more dependable water supply sources exist that can be developed to serve the central Kentucky area and KAWC customer base while still providing for adequate protections for landowners directly affected by the alternatives. Specifically and without limitation, the Louisville Water Company system has available treated water capacity significantly in excess of that which could be made available through the Kentucky River Station II project, and which will provide treated water capability both to meet current regulatory requirements under the Safe Drinking Water Act and anticipated requirements for microbial pollutants without requiring Lexington to invest in such treatment capability. This approach is far more cost-efficient and cost-effective, and was recognized to be so in 1998 by Kentucky American, which noted in its “Bluegrass Water Project Update” that construction of a pipeline to the Louisville Water Company and purchase of treated water would “eliminate the need for additional investments in plant capacity to overcome the treatment plant deficit” and would “provide the treated product to existing and new customers without requiring additional construction to increase plant capacity” as well as resolving the raw water deficit issue that was acknowledged to exist in the Kentucky River. The 1998 update noted that the time from construction after PSC

approval to operational status would be roughly 18 months. The timeline would possibly be shorter and the costs lower given the existing and planned eastward extensions of the Louisville Water Company system since that time.

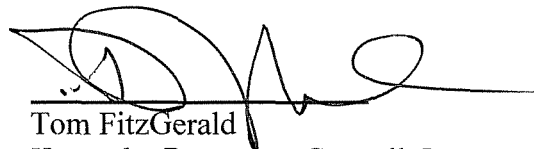
12. In addition to the interests of CAWS ratepayer members in avoiding a more costly water supply option, the interests of CAWS members whose properties would be directly affected by the proposed alternative are within the ambit of this proceeding. The issuance of a Certificate of Public Convenience and Necessity (CPCN) is required by KRS 278.020(1), which demands that the applicant utility obtain from the Commission a “certificate that public convenience and necessity require the service or construction” for which approval is sought. While the statute does not prescribe the specific standard for approval or denial of a request for a CPCN, the Courts have noted that public convenience and necessity embodies both the demonstration of a need for the new facility, system, or service, and also the absence of wasteful duplication. See: Kentucky Utilities Co. v. Public Service Commission, Ky., 252 S.W.2d 885, 890 (1952) “[A] determination of public convenience and necessity requires both a finding of the need for a new service system or facility from the standpoint of service requirements, and an absence of wasteful duplication resulting from the construction of the new system or facility.” Intervenor CAWS and its members who are property owners along the proposed route are directly affected by what they believe is a wasteful duplication of available water capacity that could be developed at much lower cost in economic terms that encompass a range of measurable direct and indirect economic impacts including ecological and property damage. Those interests are specifically cognizable under statute, since as this Commission has previously acknowledged, the legislature has



rejected the Satterwhite rationale and has recognized that persons over whose properties utility facilities will pass **are** persons “interested” within the meaning of KRC 278.020 for purposes of intervention. The participation of CAWS will provide the Commission with the perspective and information concerning the costs and impacts of the proposed routing on land and water resources in the Owen and northern Franklin County areas from those most directly affected.

WHEREFORE, for the reasons stated above and in the interests of assuring that those constituencies that would be most directly affected by the proposed project are heard during this deliberative process, and because the special interests of CAWS and its member ratepayers and property owners are not adequately represented by existing parties, and additionally in order to provide the Commission with issues and development of facts that will assist the Commission in fully considering the matter, Movant CAWS requests, on behalf of its member ratepayers and property owners, that it be accorded the status of full Intervenor, and that each party to the case be directed to serve upon CAWS and the undersigned counsel, all pleadings and information requests that are filed in this case.

Respectfully submitted,



Tom FitzGerald  
Kentucky Resources Council, Inc.  
P.O. Box 1070  
Frankfort, Kentucky 40602  
(502) 875-2428

Counsel for Movant for Intervention  
Citizens for Alternative Water  
Solutions, Inc. (CAWS)

## CERTIFICATE OF SERVICE

I hereby certify that the original and 10 copies have been mailed this day for filing by overnight service to the Commission and has been served by first-class mail upon the following individuals this 2<sup>nd</sup> Day of May, 2007:

Hon. A.W. Turner Jr.  
Kentucky-American Water Company  
2300 Richmond Road  
Lexington, KY 40502

Hon. Lindsey Ingram Jr.  
Stoll Keenon Ogden PLLC  
300 West Vine Street Suite 2100  
Lexington, Kentucky 40507

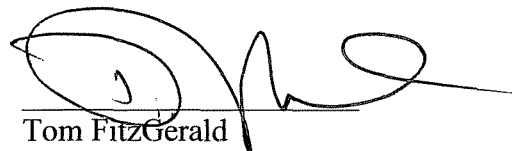
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Tom Fitzgerald