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**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

JAN 15 2008

**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)	

**KENTUCKY-AMERICAN WATER COMPANY'S
RESPONSE TO LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT'S MOTION TO AMEND PROCEDURAL SCHEDULE**

Nearly ten months ago, Kentucky-American Water Company ("KAW") filed its Application in this case. Since that time, extensive discovery has taken place, numerous experts have provided opinions, the initial procedural schedule has been amended four times, three different public hearings have occurred, and more than three full days of testimony was given at the evidentiary hearing (the transcript is 1,044 pages long). Now, with only three business days remaining before this matter is to be fully briefed and submitted for a decision, the Lexington-Fayette Urban County Government ("LFUCG") asks this Commission to amend the procedural schedule for a fifth time.

The purported reason for the motion is that the LFUCG Council wants to see yet another Louisville Water Company ("LWC") PowerPoint presentation describing the idea LWC has floated. That idea was proven to be just that – an idea with no support in fact or in the law. No reasonable person could review the record in this case, which includes nearly twenty *years* of research and work towards solving Central Kentucky's source of supply problem, and conclude that any party, including LWC and the LFUCG, has been deprived the right to due process. This

Commission must end this case and make a decision forthwith. Any other action will result in KAW's customers being exposed to an increased and unnecessary exposure to drought effects *and* an increase in the cost of constructing the Facilities KAW has proposed in this case.

Throughout this case, the Commission has repeatedly recognized the importance of issuing its decision timely. First, in response to KAW's request for a procedural schedule that would "complete the record for decision in the last quarter of [2007]," the Commission set a procedural schedule by which the case was supposed to have been submitted for a decision no later than November 16, 2007.¹

Second, in granting LWC's Motion to Amend Procedural Schedule in part, the Commission noted the importance of the case being submitted for a decision by the end of 2007.² The Commission noted that nearly every party in the case opposed LWC's Motion on the basis that the requested delay would "unduly disrupt the proceedings and will prevent [KAW] from meeting required deadlines for the acceptances of bids and issuance of construction contracts."³ The Commission also stated that it found "considerable merit in the arguments of the motion's opponents."⁴ Finally, when the Commission amended the procedural schedule, it said:

Despite [Mr. Heitzman's] contention that LWC "is in a unique position to meet this need with less cost to end-user customers," Mr. Heitzman provided few specifics and, except for a copy of a presentation made to the Lexington-Fayette Urban County Government earlier that month, no supporting documentary evidence.

* * *

Our action, however, should not be construed as a blank check. LWC will not be permitted further extensions of time. If it cannot

¹ See the Commission's April 20, 2007 Order.

² See the Commission's September 5, 2007 Order, p.1.

³ See the Commission's September 5, 2007 Order, p. 4.

⁴ Id.

provide the documents and testimony within the time permitted, we will draw the appropriate conclusions from its failure to do so.

Third, at the evidentiary hearing of this matter, the Commission again recognized the importance of a timely decision. At the end of the hearing, the Commission postponed the date for submission of the case for a decision to December 28, 2007 to allow time for preparation of the written transcript of the hearing. Chairman Goss stated:

I understand Kentucky-American's desire and need to have a decision from this Commission as expeditiously as possible and I understand, you know, part of the reason that we're just now holding the hearing on the 28th of November is that we sustained Louisville Water's Company's motion to intervene and we're going to endeavor to get a decision out in this case just as soon as possible, and I understand Kentucky-American's concern with regard to its bids I really still want to get a decision out in this case in mid-January⁵

Fourth, when the Commission delayed the procedural schedule by Order of December 21, 2007 by 19 days (making January 16, 2008 the date upon which the case would be submitted for a decision), it noted that "this additional time should not significantly delay the entry of a final Order in this proceeding or otherwise affect the interest of any party."⁶ In sum, since the Commission originally set the deadline of November 16, 2007 for submission of this case, that deadline has been postponed to November 26, 2007,⁷ December 21, 2007, December 28, 2007, and January 16, 2007. At almost every turn, the Commission has noted the importance of a timely decision.

Chairman Goss was exactly right in recognizing the importance of a timely decision because of the deadline by which KAW must accept the winning construction bids. The deadline for acceptance of those bids is February 7, 2008. If they are not accepted by that time, they will

⁵ Transcript of Evidence, Volume III, pp. 383 – 385.

⁶ See the Commission's December 21, 2007 Order, p. 4.

⁷ See the Commission's Order of August 2, 2007.

expire. Without question, if this project has to be re-bid, the amount of the bids will increase, which will lead directly to higher rates for KAW's customers.

Every time the procedural schedule has been amended, the mantra for extending it has been "a few more days cannot hurt." Indeed, LFUCG Council Members chanted that mantra repeatedly as they debated their course of action on January 8 & 10, 2008.⁸ However, the cumulative effect of the repeated delays has postponed a decision in the case to the point where any further delays will cause the bids to expire before the Commission decides the case. Likewise, any further procedural delays could lead to a corresponding delay in the commencement of construction such that the proposed Facilities will not be ready in time to avoid the 10 MGD deficit in treatment capacity that will occur in 2010,⁹ which deficit does not include the additional demand that will be created by the 2010 World Equestrian Games. Clearly, the LFUCG Council does not comprehend or chooses to ignore the fact that the 30 days suggested in its resolution will, in reality, mean a delay much longer than 30 days. Indeed, although the resolution speaks of a 30-day delay, the LFUCG's Motion actually asks for an "appropriate additional period of time." Obviously, the motion implicitly acknowledges that a delay of more than 30 days is necessary for the LFUCG Council to do whatever it plans to do.

One of the reasons that the LFUCG Council's course of action will take more than 30 days was identified by LFUCG Council Member David Stevens, one of the major proponents of the delay resolution. He raised the possibility of the LFUCG hiring a consultant¹⁰ to analyze KAW's proposal and LWC's idea. If that hiring happens, it is inconceivable that any credible

⁸ Those debates occurred after hearing the position of Mayor Newberry, who, after attending and/or observing the complete evidentiary hearing, concluded that KAW's proposal should be implemented.

⁹ See Table 2 attached to Linda Bridwell's Direct Testimony.

¹⁰ See Herald-Leader article "More Water Plan Study Time Sought" dated January 11, 2008.

study would even commence sooner than 30 days from now. Moreover, to the extent bids expire and re-bidding occurs, the resulting delay will be measured in months, not days.

The Commission's December 21, 2007 Order extended the schedule in this case for several days, apparently to determine if a private/public partnership might provide less expensive financing for KAW's proposed project. The Commission asked numerous questions of four parties primarily aimed at that issue. The LFUCG Council, oblivious to the Commission's directives, has gone off in a completely different direction. Its delay resolution is totally unrelated to any financing question but simply invites LWC to suggest some new proposal du jour. This venture into a foreign field is nothing more than an attempt by the LFUCG to take control of this case, which the Commission must resist. If granted, the LFUCG's request will result in significant delay, expiration of KAW's bids, and increased cost. It may also result in additional discovery and hearing cross-examination. Of course, discovery and cross-examination are invaluable tools to be used in determining whether KAW's Application should be granted. But those tools have already been used well and the result is that the certificate process is now complete and KAW's Application should be granted.

That the Commission's December 21, 2007 Order has resulted in the possibility of the LFUCG hiring its own consultant to study the source of supply issue is most ironic. Apparently, the LFUCG Council is unaware of or ignores the fact it has *already paid for a report* prepared by a consultant who studied the issue exhaustively. The O'Brien & Gere Report dated February 27, 2004, which was supplemented by letter of October 12, 2005,¹¹ was paid for, in part, by contributions from members of the Bluegrass Water Supply Consortium (now the Bluegrass

¹¹ The Report and its supplement are of record in this case. The report was filed on June 28, 2004 in Case No. 2001-00117 (which case has been incorporated into this case) and the supplement was attached to KAW's Response to Item No. 6 of the Commission Staff's First Set of Interrogatories in this case.

Water Supply Commission (“BWSC”). Of course, the LFUCG was a member of the Bluegrass Water Supply Consortium and is a member of the BWSC. Therefore, its contributions to that entity were used to pay for the O’Brien & Gere Report.¹² That report, as supplemented, recommends a Kentucky River Pool 3 solution as the best solution over dozens of alternatives, including a Louisville pipeline alternative that was proposed by LWC. It must be noted that the BWSC has taken a definitive position in this case in support of KAW’s proposal. Indeed, BWSC and KAW have already entered into a type of public-private partnership that is the subject of the Commission’s December 21, 2007 Order. Thus, by virtue of its membership in the BWSC, the LFUCG has already spoken out in favor of KAW’s proposed solution.

Several LFUCG Council Members met with LWC on Monday, January 7, 2008.¹³ One result of that meeting was the effort by those Council Members to seek a delay in the case. Another result of that meeting was Mr. Heitzman’s January 9, 2008 letter to Council Member Stevens.¹⁴ In that letter, Mr. Heitzman states that he will meet with the LFUCG Council to “evaluate the Louisville Pipeline cost, the pipeline route, the potential use of the I-64 right-of-way and the availability of public financing for the project.” Of course, all of those issues have already been addressed in full in this case and were the subject of extensive cross-examination at the evidentiary hearing. LWC has been afforded due process. Despite its earlier request in this case to amend the procedural schedule, which was granted, LWC has failed to provide details and/or studies either in this case or for the LFUCG that would call for any serious consideration

¹² O’Brien & Gere Report, p. 1.

¹³ That meeting was disclosed at the LFUCG Council’s Work Session on January 8, 2008.

¹⁴ A copy of the letter is attached.

of LWC's idea as a viable alternative. Indeed, if LWC makes another presentation to the LFUCG, it will be the *fourth*¹⁵ presentation since July 2007.

The LFUCG appears ready to conduct its own "hearing" for the purpose of deciding whether KAW's Application should be granted. Its resolution invites LWC and all others offering responsible solutions to "present their most thorough, comprehensive, and final proposals to the Lexington-Fayette Urban County Council and to the Public Service Commission within thirty (30) days of this resolution." This language is most alarming. It reveals the fact that the LFUCG Council seeks to hold some sort of procedure by which it plans to weigh various alternatives and conclude which is best. This alone comes dangerously close to infringing on the Commission's jurisdiction to decide this case. However, what is even more troubling is that the resolution invites those proposals to be submitted directly *to the Commission* and seeks to extend this case to allow time to do so. It is a deliberate attempt to direct Commission procedure and, likewise, infringes on the Commissions' jurisdiction over this case. These infringements are, of course, simply unacceptable and must be stopped.

If the LFUCG Council chooses to waste its time watching LWC PowerPoint presentations about an ever-evolving LWC idea for which there is no engineering design, no hydraulic analysis, no consideration of the regulatory implications, no realistic possibility of using the I-64 right-of-way, no guarantee of LWC plant capacity,¹⁶ no pipeline routing study, no environmental study, no threatened or endangered species study, no bids,¹⁷ and, finally no

¹⁵ LWC made presentations to the LFUCG on July 10, 2007, August 21, 2007 and September 18, 2007.

¹⁶ LWC's guarantee of "pipeline capacity" is useless without a corresponding guarantee of plant capacity.

¹⁷ KAW's cost estimates were proven most reliable when the bids KAW received totaled very close to the KAW estimates. Without bids, LWC's ever-changing idea and related cost estimates are inherently suspect. And in the absence of any established criteria by which to judge LWC's

permitting, then, of course, it is free to do so. But KAW, its customers, and the BWSC should not suffer the consequences of that waste of time. Finally, even on the face of LWC's idea, it will not drought-proof Central Kentucky until, at the earliest, 2012.

There is a logical end to all litigation and to this case. At every opportunity, the Commission has made decisions in this case based upon its goal of exploring every possible facet of solving the source of supply problem. It is now time for the Commission to draw the line and put an end to the debate. It can do so only by deciding whether to grant or deny KAW's Application based upon the law. The law does not require the LFUCG to hire an additional consultant. It does not require the Commission to wait and see if the LWC's idea is going to change – again. It does not require KAW's customers to wait for a solution while LWC has fruitless meetings with LFUCG Council Members. It *does* require the Commission to issue the requested certificate if a need exists and the proposed solution to meet that need is reasonable. Here, the existence of need is beyond any legitimate dispute. Further, KAW's proposed solution is a reasonable and cost-effective means of meeting that need. Indeed, upon pointed cross-examination questioning from Chairman Goss, Mr. Heitzman admitted the existence of the need and that KAW's proposed solution is reasonable and cost-effective.¹⁸

For all of these reasons, the LFUCG's Motion to Amend Procedural Schedule must be denied.

idea or to have its questions answered under oath, the LFUCG Council's ability to reliably determine credibility, validity, and/or effectiveness of a proposed alternative is highly questionable.

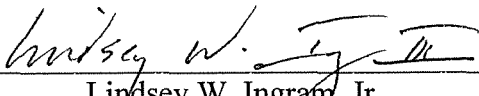
¹⁸ Transcript of Evidence, Volume III, pp. 322 – 325.

Respectfully submitted,

A. W. TURNER, JR., GENERAL COUNSEL
KENTUCKY-AMERICAN WATER COMPANY
2300 Richmond Road
Lexington, Kentucky 40502

and

STOLL KEENON OGDEN PLLC
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507-1801
Telephone: (859) 231-3000

BY: 
Lindsey W. Ingram, Jr.
Lindsey W. Ingram III

Attorneys for Kentucky-American Water Company

CERTIFICATE OF SERVICE

This is to certify that on the 15th day of January, 2008, the original and eight (8) copies of the foregoing were filed with the Public Service Commission and a copy of each served upon the following via U.S. Mail:

David E. Spenard, Esq.
Dennis G. Howard II, Esq.
Assistant Attorneys General
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601-8204

David Barberie, Esq.
Leslye M. Bowman, Esq.
Lexington-Fayette Urban County Gov't.
Department of Law
200 East Main Street
Lexington, Kentucky 40507

Tom FitzGerald, Esq.
Kentucky Resources Council, Inc.
P.O. Box 1070
Frankfort, Kentucky 40602

David F. Boehm, Esq.
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202

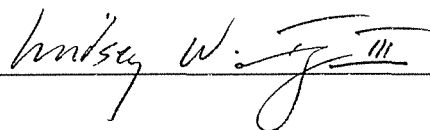
Damon R. Talley, Esq.
112 N. Lincoln Blvd.
P.O. Box 150
Hodgenville, Kentucky 42748-0150

John N. Hughes, Esq.
124 W. Todd Street
Frankfort, KY 40601

John E. Selent, Esq.
Edward T. Depp, Esq.
Dinsmore & Shohl LLP
1400 PNC Plaza
500 West Jefferson St.
Louisville, Kentucky 40202

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

STOLL KEENON OGDEN PLLC

By  _____



LOUISVILLE WATER COMPANY

550 SOUTH THIRD STREET • LOUISVILLE, KENTUCKY 40202

TEL 502-569-3681

FAX 502-569-0806

GREG C. HEITZMAN
PRESIDENT

January 9, 2008

Councilman Dr. David Stevens
Lexington-Fayette Urban County Council
200 East Main Street
Lexington, KY 40507

Dear Councilman Stevens:

In response to your request today, I am glad to meet with members of the Lexington-Fayette Urban County Council to review the Louisville Pipeline option to provide water to Central Kentucky. I understand your primary interest is evaluating the Louisville Pipeline cost, the pipeline route, the potential use of the I-64 right-of-way and the availability of public financing for the project. I can also update the Council on our progress to build a pipeline along the I-64 corridor from Louisville, through Shelby County, to Frankfort. Each of these issues can be fully explored over the next 30 days to allow the Council to make an informed decision regarding the water supply for Central Kentucky.

I certainly appreciate the importance of a cost effective, reliable, and timely solution to meet the water supply needs in Central Kentucky and want to assure the Council that Louisville Water Company is committed to these same objectives. I am excited about exploring this partnership with Lexington and Kentucky American Water and look forward to working with you over the coming weeks. I can be reached at 502-569-3681 for any questions.

Sincerely,

Greg C. Heitzman, P.E.
President & CEO

GCH/kj

cc: Vice Mayor Jim Gray
Councilwoman Linda Gorton