

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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MAR 13 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 LOUISVILLE WATER COMPANY'S MOTION
TO SCHEDULE INFORMAL CONFERENCE

On March 10, 2008, Louisville Water Company ("LWC") filed a Motion to Schedule Informal Conference ("LWC's Motion"). The stated reasons for the informal conference (or, alternatively, a mediation) are: (1) to discuss Kentucky-American Water Company's ("KAW") desire to partner in the construction of a pipeline to the Ohio River¹; (2) to discuss the "interim measures" suggested by LWC in Mr. Heitzman's February 11, 2008 testimony, and, given those "interim measures," the immediacy of the need for the facilities KAW has proposed in this case;² and (3) to allow for a mediation that would be paid for by LWC and KAW that would involve expert witness participation and that "would resolve the substantial issues presented by this case."³

As set forth below, KAW will participate in good faith in any discussion, conference, mediation, or other useful effort towards solving the problem at hand. However, the Commission has already recognized in this case that requiring such discussions when there is

¹ LWC Motion, ¶ 4(a).

² LWC Motion, ¶ 4(b)-(c).

³ LWC Motion, ¶¶ 6-7.

“very limited enthusiasm”⁴ for them is undesirable. KAW’s enthusiasm for the type of meeting LWC has proposed is, at most, “limited” for a very simple reason: KAW has repeatedly performed a thorough analysis of LWC’s idea and is convinced beyond any doubt that the KAW proposal is the best and least expensive solution for KAW’s customers and that the case for a certificate has been well-proven.

LWC’s Motion demonstrates that LWC fails to understand the basic fundamentals of this proceeding. This proceeding is not a piece of litigation in which KAW has made claims and LWC has asserted defenses and/or counterclaims. There are no claims for damages in this proceeding that might be compromised by settlement discussions, mediations, or informal conferences. Although this Commission has repeatedly stated that LWC *has no proposal* in this case, LWC acts like it does. LWC’s Motion would have one believe that LWC’s pipeline idea competes for approval in this case along with KAW’s proposal. Of course, that is simply not the case. The Commission stated it best when it denied LWC’s *first* motion⁵ for an informal conference:

[W]e find the current proceeding is not well adapted for “administrative mediation.” LWC has not made an application to this Commission for the construction of facilities nor does it have a direct and immediate interest in Kentucky-American’s proposal. In contrast, Kentucky-American’s customers have a direct interest as the cost of any facilities for which a certificate is granted will be reflected in their future rates for water service. Similarly, the issuance of a certificate will affect those persons whose property lies along the route of the proposed transmission main. While such interest may not establish a right of intervention in this proceeding, it certainly would suggest an interest amenable to mediation and negotiation. LWC has neither. We granted LWC leave to intervene in this proceeding because its intervention could assist the Commission in developing facts and issues.⁶

⁴ November 26, 2007 Order, p. 2.

⁵ On October 16, 2007, LWC moved the Commission for an informal conference on grounds similar to those presented in LWC’s Motion. That motion was denied by the Commission’s November 26, 2007 Order.

⁶ November 26, 2007 Order, p. 1 (emphasis added).

Thus, the Commission *has already held in this case* that LWC does not have an interest that is amenable to any sort of mediation.

As mentioned above, LWC claims that an informal conference⁷ would allow discussion on the issue of KAW's desire to partner in the construction of a pipeline to the Ohio River. KAW has no desire to partner in the construction of a pipeline to the Ohio River because such a pipeline is not the best solution to the problem at hand. KAW has proven that the best solution is the solution it has proposed. Based upon a tremendous amount of work, research, analysis, and thoughtful consideration, KAW concluded that its proposed facilities are the best solution for its customers before it filed its Application in this case.

As to the issue of the "interim solutions" LWC has suggested and the claimed resulting lack of immediacy for KAW's solution, Mr. Heitzman's testimony on March 5, 2008 proved those interim solutions to be infeasible. First, Mr. Heitzman was forced to make wholesale changes to his February 11, 2008 pre-filed testimony to account for his ignorance of the problems with a "Georgetown interconnection." Clearly, the ability of Frankfort to provide an "interim solution" via Georgetown is not feasible. Further, KAW demonstrated at the March 5, 2008 hearing that Frankfort has previously taken the position that it cannot provide more than 1 MGD to Central Kentucky.⁸ Additionally, KAW demonstrated through the cross-examination of

⁷ It must be noted that the regulation upon which LWC relies for its request for an informal conference (807 KAR 5:001, Section 4(4)) allows for informal conferences "either prior to, or during the course of hearings in any proceeding." Since the hearings in this matter have already been completed, the regulation does not allow for the request LWC has made.

⁸ KAW March Hearing Exhibit No. 3, p. 3.

Mr. Heitzman on March 5, 2008 that his claim of a 5 MGD interim solution from Versailles is unrealistic.⁹

LWC has gone well beyond its stated purpose for intervention.¹⁰ LWC's presence in this case has forced KAW to prove its case to a standard well beyond that set forth in KRS 278.020. This Commission has left no stone unturned. LWC has been given every conceivable opportunity to prove that KAW's proposal does not meet the required standard. In the end, after voluminous discovery and five full days of evidentiary hearing, KAW's proposal has withstood the onslaught of LWC's and CAWS' efforts -- legal, political and otherwise.

LWC's Motion quotes the *partial* testimony of Ms. Bridwell in responding to Chairman Goss' question concerning recent meetings between LWC and KAW.¹¹ Ms. Bridwell stated that KAW has not met with LWC recently, but she also explained why there has not been any such meeting:

I mean, from our perspective, we have the cheapest proposal, after years and years of analysis, that we have designed and that we need to go about getting built, and so I guess to the extent that Kentucky-American has seen, I think Mr. Turner described it as, this dream or this idea that Louisville Water Company keeps proposing that we have evaluated and evaluated and evaluated, I guess to the extent that we see that as an attempt to simply delay

⁹ Mr. Heitzman's February 11, 2008 Supplemental Testimony, Exhibit No. 2, p. 3 (stating "a 5 mgd purchase by BWSC would be impractical with the limiting factor being the capacity of the Versailles Water Treatment Plant").

¹⁰ LWC's stated purpose for intervening was to explain the documents it produced in response to the Commission's open records request. (LWC July 30, 2007 Motion for Intervention, pp. 2-3). Indeed, Mr. Heitzman recently told the LFUCG Council that LWC was "pulled" into this proceeding. (January 15, 2008 LFUCG Council Work Session).

¹¹ LWC's Motion is inaccurate in its quote of Chairman Goss' question. LWC's Motion states that Chairman Goss said "the city of Frankfort has pulled out of the . . . has pulled out of the Bluegrass Water Supply Commission." Chairman Goss actually said just the opposite. He said that Frankfort "hasn't pulled out of the Bluegrass Water Supply Commission . . ." (Transcript of Evidence, March Hearing, Volume II, p. 78, line 25). Chairman Goss is correct. Frankfort remains a member of the Bluegrass Water Supply Commission, presumably so that it can avail itself of the Pool 3 opportunities available to BWSC if the LWC idea never comes to fruition.

progress and not necessarily to get a better project built, and so, no, we have not sat down with them to have any further discussions.¹²

Ms. Bridwell's answer came after she had testified that KAW has considered various LWC proposals at least four times over the years (in the late 1980s, in the late 1990s, as part of the BWSC's consideration of five different LWC proposals, and, for the fourth time, by Gannett Fleming, KAW's outside consultant).¹³ All of that occurred prior to the commencement of this case.

After LWC intervened and raised its idea in this case, KAW evaluated it in depth, even as it evolved from month to month. The latest version of LWC's idea is as expressed in Mr. Heitzman's February 11, 2008 pre-filed testimony (as corrected by Mr. Heitzman at the March 5, 2008 hearing). As it has at every step, KAW examined that idea from all angles: economic, rate impact, timing, engineering feasibility, etc. Then, KAW provided sworn rebuttal testimony on March 6, 2008 (with supporting documentation) that proved LWC's idea to be inferior to KAW's proposal.

KAW logically and rightfully assumes that LWC's idea as expressed in *sworn* testimony is as attractive as LWC can make it. LWC has spent months and vast resources in describing its idea to this Commission, any community that will listen, legislators and the press. In fact, on January 15, 2008, LFUCG Council Member Don Blevins specifically asked Mr. Heitzman to "sharpen his pencil" in an effort to make LWC's idea more economically attractive. However, after having had time to "sharpen his pencil," the LWC idea expressed in Mr. Heitzman's February 11, 2008 testimony is the same as he described to the LFUCG Council on January 15, 2008 (and that was before his "Georgetown interconnection" correction). Clearly, LWC's idea is as attractive as LWC can make it.

¹² Transcript of Evidence, March Hearing, Volume II, p. 80.

¹³ Transcript of Evidence, March Hearing, Volume II, pp. 14, 77-78.

Although a conference with the parties of the type LWC has requested has not occurred, the Commission should be aware that the presidents of KAW and LWC have very recently discussed – one on one – a solution to the problem. On March 6, 2008, during the evidentiary hearing, Mr. Rowe and Mr. Heitzman had a discussion in the lobby of the Public Service Commission. In that discussion, Mr. Heitzman expressed LWC’s interest in KAW’s possible ownership of part of the Louisville pipeline. That suggestion is nothing new – LWC has always mentioned KAW as a possible owner of a portion of the pipeline LWC has proposed. In that discussion between the two presidents, Mr. Heitzman gave no indication that LWC can make the LWC idea any more attractive. He merely expressed a need that has always existed for an owner – any owner – for the portion of the Louisville pipeline that LWC is prohibited by statute¹⁴ from owning. Mr. Rowe understood Mr. Heitzman’s comments to mean that KAW should abandon its proposal in this case and join in the LWC idea. Again, that is nothing new. Thus, that discussion revealed no ability for LWC to revise or refine its idea to make it a better solution than KAW’s solution. Accordingly, Mr. Rowe correctly responded that KAW believes that its proposed solution is the right solution for KAW customers for all of the numerous reasons that have been demonstrated in this case, including the reason that it is the most timely solution and, therefore, minimizes KAW’s customers’ risks.

For all of the reasons set forth above, including the reasons set forth in the Commission’s November 26, 2007 Order denying LWC’s first motion for an informal conference, KAW fails to see any utility to an informal conference or mediation. However, as KAW stated when it responded to LWC’s first motion for an informal conference, if the Commission believes an

¹⁴ KRS 96.625 sets forth a geographical limitation to LWC facilities. LWC cannot extend its facilities beyond “counties adjoining its county of origin.”

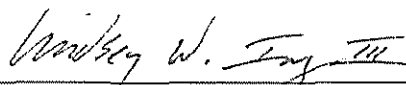
additional informal conference will assist in this matter,¹⁵ KAW will attend in accordance with any guidelines the Commission suggests.

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¹⁵ As recognized by Chairman Goss at the March 2008 hearing, the record in this case will be closed on March 20, 2008 and a decision is expected in mid-April. Therefore, any such conference must be completed prior to March 20, 2008.

CERTIFICATE OF SERVICE

This is to certify that the original and eight (8) copies of the foregoing have been filed with the Public Service Commission this the 13th day of March, 2008, and a copy mailed and e-mailed to:

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