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PUBLIC SERVICE
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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 THE CONSTRUCTION)
OF KENTUCKY RIVER STATION II, ASSOCIATED)
FACILITIES AND TRANSMISSION MAIN)

CASE NO.
2007-00134

LEXINGTON-FAYETTE
URBAN COUNTY GOVERNMENT'S BRIEF

Comes now the Lexington-Fayette Urban County Government ("Lexington"), by counsel and submits this Brief in response to the Public Service Commission's ("Commission" or "PSC") February 27, 2008 Order.

I. BACKGROUND

It is undisputed that there is a long-standing and significant water supply and treatment capacity issue faced by the Kentucky-American Water Company ("KAWC"), which the Commission previously ordered KAWC to address. Unfortunately, nearly a generation after its initial study and recognition, this water supply problem remains. KAWC believes its pending application to construct a 20 to 25 MGD water treatment plant on Pool 3 of the Kentucky River, along with an associated 42" delivery pipeline, is the appropriate solution to this problem.

II. LEGAL ISSUES FROM COMMISSION ORDER

On December 21, 2007, the Commission ordered the parties to submit briefs on four legal issues:

1. Does the Louisville Water Company have the legal authority to make wholesale water sales in the counties other than Jefferson County and those counties that are contiguous to Jefferson County?

2. Does the Louisville Water Company have the statutory authority to construct, own, and operate a water transmission main in counties other than Jefferson County and those counties that are contiguous to Jefferson County for the purpose of making wholesale water sales in counties other than Jefferson County and those counties that are contiguous to Jefferson County?

3. Does the LFUCG have the statutory authority to construct, own and operate [sic] a joint public-private venture to supply water to Kentucky-American and any other regional water suppliers?

4. May the Commission, as a condition for granting a CPCN for the proposed facilities, limit the amount that Kentucky-American may include in its rate base for rate-making purposes to the estimated cost of the proposed facilities at the time a CPCN is issued?

(Appendix E, Commission's Order of December 21, 2007).

With respect to Louisville Water Company's ("LWC") ability to sell, own and/or operate water or facilities related thereto outside of those counties that are contiguous to Jefferson County, Lexington recognizes that KRS 96.265 prohibits such an extension, and it is not aware of any contrary case law.

With respect to Lexington's statutory authority in the water supply area, pursuant to KRS 67A.060, it has retained the rights, powers, and privileges of a second class city. In addition, it has broad legislative authority within its jurisdictional limits. KRS 67A.070. Lexington therefore asserts that depending upon the circumstances, it does "have the statutory authority to construct, own and operate [sic] a joint public-private venture to supply water to Kentucky-American and any other regional water suppliers", or at least a substantial part of such a venture. Appendix E, paragraph 3. KRS Chapter 96 (see, e.g., KRS 96.120-160, 320, 350, and 360); KRS 58.140; and KRS 106.010.

Finally, Lexington believes that under the Commission's general inherent legal authority (see e.g., the multiple final orders from Commission Case No.'s 2002-00317 and 2006-00197, in which the approval of the Commission was contingent upon KAWC's agreement to numerous conditions), as well as the applicable case law (see, e.g., Kentucky Utilities Co. v. Public Service Commission, 252 S.W.2d 885 (Ky., 1952)), the Commission may, as a condition to any approval of a certificate for the proposed facilities, limit the amount that KAWC may include in its rate base for rate-making purposes at the time the certificate is issued to the estimated cost of the facilities. This will protect the ratepayers, and is a reasonable limitation under the circumstances.¹

¹ Lexington further adopts the arguments of the Attorney General to the extent that he supports the imposition of a cap on this (or any other) project - thereby ensuring some level of cost certainty to the ratepayers.

III. FACTS

On August 21, 1997, the Commission ordered KAWC to “take the necessary and appropriate measures to obtain sources of supply so that the quantity and quality of water delivered to its distribution system shall be sufficient to adequately, dependably, and safely supply the total reasonable requirements of its customers under maximum consumption through the year 2020.” PSC Case No. 93-434, Order of August 21, 1997, page 6 (the “1997 Supply Order”).

KAWC still has an existing source of supply and treatment capacity issue. Now it can no longer draw a “safe yield” of water from its existing treatment plant on Pool 9 of the Kentucky River during certain “peak” day and drought conditions. (Pre-filed Direct Testimony of Kentucky-American Water Company witness Linda C. Bridwell, P.E., p. 4 lines 14-24; p. 27, line 20 - p. 28, line 3, Tables 1 and 2). Based upon the permit-reliant numbers, this deficit of water is projected by KAWC to be 20 MGD during certain conditions by 2010 (Bridwell Table 2).

The record in the case establishes that there is currently no planned feasible action to permanently enhance the water supply at Pool 9 at a level that will sufficiently address the purported water deficit. (See, e.g., Application of Kentucky-American Water Company, paragraph 10; Record from Public Service Commission Case No. 2001-00117; Hearing Testimony of Attorney General witness Scott Rubin, Video Transcript, 11-27-07, 0:5:02:00-5:03:24). In a best-case scenario, at some unknown point in the future, up to an additional 900 million gallons of raw water will be stored on a temporary basis at this pool through the use of four foot crest gates on Dam 9. (Hearing Testimony of Kentucky-American Water Company witness Linda Bridwell, Video Transcript, 03-06-08, 08:42:28-08:44:53

AM, 09:19:15-09:26:00 AM; February 28, 2008 letter from Stephen Reeder, Executive Director, Kentucky River Authority to State Senator Julian Carroll, attached to the Direct Testimony of Citizens for Alternative Water Solutions' Witness, Martin Solomon. See also Application of Kentucky-American Water Company, paragraph 10; Record from Public Service Commission Case No. 2001-00117; Hearing Testimony of Attorney General witness Scott Rubin, Video Transcript, 11-27-07, 0:5:02:00-5:03:24).

KAWC is seeking Commission approval to construct a water treatment plant on Pool 3 of the Kentucky River and a 42" delivery pipeline. (Application, paragraphs 11-12; Pre-filed Direct Testimony of Kentucky-American Water Company witness Nick O. Rowe, p. 3 lines 7-11). According to KAWC, this project is consistent with the 1997 Supply Order, and will provide for the projected population growth of its existing customer service base (as projected by census numbers), as well as sufficient "drought proofing" through the year 2030. (Hearing Testimony of Rowe, Video Transcript, 11-26-07, 10:55:45-10:56:14 AM). The projected construction cost of the proposed facilities (20 MGD) is approximately \$165 million (Direct Pre-filed Testimony of Kentucky-American Water Company witness Louis M. Walters, p. 3, lines 11-12; Bid Release Information Provided by Kentucky-American Water Company through its Post-Hearing Data Response; Hearing Testimony of Bridwell, Video Transcript, 03-06-08, 09:40:18-09:42:23 AM), which equates to roughly a \$7-\$9 a month increase to the average residential water bill, dependent upon whether the Bluegrass Water Supply Commission ("BWSC") is a participant, and assuming certain rate conditions. (Hearing Testimony of Kentucky-American Water Company witness Michael A. Miller, Video Transcript, 11-28-07, 11:55:00-11:55:20 AM; Kentucky-American Exhibit No. 12, March 6, 2008 hearing).

KAWC's application proposes a 20 MGD treatment plant, which can easily be expanded to treat 25 MGD (the additional 5 MGD is to be set aside for use by the BWSC). (Application, paragraphs 11-13). The projected cost to the ratepayers of KAWC of a 25 MGD plant is actually less than a 20 MGD plant because BWSC would pay for some of the facilities. (Kentucky-American Exhibit No. 12, March 6, 2008). However, KAWC's application is not contingent upon the BWSC following through on its commitment.

There is currently an April 1, 2008 contractual deadline for the BWSC to make a decision on its commitment to the additional 5 MGD (Louisville Water Company Exhibit No. 6, Agreement of November 20, 2007 between Bluegrass Water Supply Commission and Kentucky-American Water Company, paragraph 17). After this date, KAWC may not be able to construct the additional treatment plant capacity under the same general cost assumptions.

The 42" pipeline, which is being recommended for both energy cost savings and safety reasons, would not change if the additional 5 MGD in treatment capacity is not constructed. (Application, paragraphs 11-12; Hearing Testimony of Kentucky-American Water Company witness Richard C. Svindland, Video Transcript, 11-27-07, 06:14:30-06:14:50, 06:15:34-06:17:00 PM). Moreover, KAWC asserts that LWC's representation that the construction of a pipeline from Louisville to Frankfort is imminent does not change its desire to pursue the application. (Hearing Testimony of Bridwell, Video Transcript, 03-06-08, 09:37-09:40:10 AM).

Lexington has been a member of the BWSC since its inception. The KAWC proposal is substantially similar to the preferred project selected by the BWSC, based upon a multi-

year study of the water supply deficit issue by O' Brien and Gere Engineers, Inc. (Response of BWSC to Data Request No. 1(b) of the Citizens For Alternative Water Solutions, Inc.).

KAWC has been permitted by the Division of Water to draw up to 20 MGD from Pool 3, which is located downstream of KAWC's existing treatment plant near the Franklin/Owen County line. (Exhibit G to Application). This pool was represented by KAWC to have the capacity necessary to have up to 30 MGD of water drawn from it without any additional enhancements to its dam. (Hearing Testimony of Svindland, Video Transcript, 11-27-07, 06:27:50-06:29:50 PM; Attorney General Exhibit No. 4, Certified copy of Surface Water Permit Fact Sheet Dated January 10, 2007). However, the necessary permits to expand the capacity would need to be obtained. If crest gates were added to this dam (it is not clear that this can or will be done), the water supply in this pool would increase accordingly, and the pool could then provide an even greater additional source of supply in the future if necessary.

Although there was some evidence presented about the age and condition of the dam at Pool 3, it does not appear to be in danger of failure at this time. (Hearing Testimony of Attorney General witness Scott Rubin, Video Transcript, 11-27-07, 04:48:00-04:48:20 PM). At the March 2008 hearing, the Kentucky River Authority provided evidence that a design report has been performed on Dam 3, and that repairs to the dam are scheduled to be made in the near future. (Kentucky River Authority Exhibit No.'s 1 through 4, March 5, 2008 hearing).

KAWC asserts that if its application is approved, it could finish construction and begin providing additional water sometime in 2010, despite apparent opposition to its pipeline route, and the fact that to date it has not obtained the majority of the necessary

easements. (See e.g., Pre-filed Testimony of Svindland, Question 36, page 15). Because of its proximity to the Ohio River, it may also be feasible to have this pool supplemented with raw water from the Ohio River if an additional source of water was needed in the future. However, as demonstrated at the November 2007 hearing, long-term “expert” projections (i.e., beyond 20 years) regarding future water consumption are sometimes overstated by a magnitude of more than 100%, so the need for such additional treatment capacity or raw water remains to be seen. (“Long Range Plan for Water Service Louisville Metropolitan Area, Louisville Water Company 1968-2000” July, 1967, Alvord, Burdick & Howson; Hearing Testimony of Louisville Water Company witness Greg Heitzman, Video Transcript, 11-28-07, 3:46:30-3:48:08 PM).²

The LWC outlined a “competing” proposal through pre-filed testimony and at the hearings. Although LWC presented a moving target at all of the hearings with respect to a number of issues (and presented a number of potential proposals), its specific counter-proposal was the construction of a 36” pipeline for treated water to be provided from its treatment plant into KAWC’s system in Fayette County (Pre-filed Direct Testimony of Greg Heitzman; Pre-filed Supplemental Testimony of Gregory C. Heitzman). This pipeline, which the LWC believes could be operational by 2012, would be owned and operated by various yet-to-be determined entities once it left Shelbyville, and would purportedly be able to obtain a significant amount of public financing. (Revised Pre-filed Supplemental Testimony of Gregory C. Heitzman). LWC asserts that it can legally extend its facilities into Franklin

² If crest gates were installed on Dam 9, this would also serve as an additional supplemental raw water supply which might eliminate a need to go to the Ohio River in the future.

County and beyond notwithstanding KRS 96.625. However, the future ownership of the portion of the pipeline beyond Shelbyville remains a mystery.

In order to ensure an adequate water supply prior to its 2012 construction completion date, LWC recently proposed a number of stop-gap measures involving up to 10 MGD of treated water being obtained from Versailles and Frankfort. (Revised Pre-filed Supplemental Testimony of Gregory C. Heitzman). However, because this water would ultimately be needed by the supplying systems in the future, it could only be relied upon for a short duration. KAWC challenged the feasibility of having any of this additional water available, even as a short-term solution, as there are a number of construction and permitting issues related to both Versailles' and Frankfort's systems. (Kentucky-American's Exhibits No.'s 2, 3 (p. 3), 4, (p. 2 of 5 of attachment), and 5 from March 5, 2008; Hearing Testimony of Bridwell, Video Transcript, 03-06-08, 08:12:08-08:15:00 AM).

Assuming that LWC could meet most of its construction assumptions (location of the pipeline in the I-64 corridor, etc.), it is possible that such a pipeline could be constructed for less than the construction cost of the KAWC proposal (Rebuttal Testimony of Rubin; Hearing Testimony of Rubin, Video Transcript, 11/27/07, 04:12:28-04:13:00 PM).

However, under LWC's proposal to provide water to KAWC under a 2:1 "take or pay" contract, if KAWC is to ensure the Commission and its customers the same level of drought protection that exists under its proposal (i.e., up to 20 MGD), it must contract to reserve that same amount of water from LWC (LWC's Response to Lexington's Request for Information No. 6(a); Pre-filed Rebuttal Testimony of Bridwell, p. 2, line 26 - p. 3, line 10; Hearing Testimony of Bridwell, Video Transcript, November 27, 2007, 10:41:39-10:43:05

AM)³. This amount of water increases the cost of the LWC proposal to likely meet or exceed the cost of the KAWC proposal in total present value. (Pre-filed Rebuttal Testimony of Rubin, page 9 lines 4-5; Hearing Testimony of Rubin, Video Transcript, 11-27-7, 04:14:20-04:15:50 PM).

In addition, because LWC's proposal is still in the pre-design phase, it is impossible to ascertain which route the pipeline would ultimately take, whether the ultimate design would require a larger pipe size, the type and level of opposition to such a proposal, and what entities (if any) would ultimately partner with LWC to own or operate the facility. (See e.g., Revised Prefiled Supplemental Testimony of Heitzman).

Mr. Rubin testified that the water deficit problem needed to be addressed as soon as possible. He has recommended that the KAWC application be approved, subject to certain conditions being placed on KAWC related to cost capping, conservation, and future water supply planning. (Pre-filed Direct Testimony of Rubin, page 4; Rebuttal Testimony of Rubin, page 11). KAWC has not agreed to a cost cap, but generally agreed to the other conditions. (Hearing Testimony of Rowe, Video Transcript, 11-26-07, 01:29:00-01:32:15 PM; Pre-filed Rebuttal Testimony of Bridwell, pages 8 -10).

³ LWC's proposal actually only commits to a reservation of up to 25 MGD in pipeline capacity, not in treatment capacity. (Hearing Testimony of Heitzman, Video Transcript, 11-28-07, 02:14:30-2:15:07). This did not change at the March 2008 hearing.

IV. ARGUMENT

Based upon the vast and lengthy history of Central Kentucky's water supply needs, much of which is of record in this case, it is clear that many proposals, ideas, and solutions have been explored, considered, and even attempted. KAWC has been under a standing order of the Commission to address its "maximum consumption needs through 2020" since 1997. PSC Case No. 93-434, Order of August 21, 1997, page 6. However, to date the problem remains unresolved. In the words of Mr. Rubin, and as further supported by the evidence, something must be done by KAWC to address a "serious supply" and water deficit issue, as it is beyond dispute that certain water draw conditions already exceed the safe permitting yields. (Hearing Testimony of Rubin, Video Transcript, 11/27/07, 03:38:45-03:41:57; 03:49:58-03:52:21 PM). Thus, there is a need for some type of facilities to be constructed to address this problem as soon as possible.

Unfortunately, history has also proven that there is no perfect solution to this problem. Any meaningful solution will be costly to ratepayers and opposed by many. There will be some impact to the environment. Property owners along any pipeline route will be affected. As a result, and as the Commission has previously articulated in this hearing, this is a difficult and divisive issue.

The primary issue in this case is whether KAWC's proposal is an appropriate and reasonable solution to this problem. See KRS 278.020; Kentucky Utilities Co. v. Public Service Commission, 252 S.W.2d 885 (Ky., 1952). Lexington believes that at a minimum, the following factors should be considered by the Commission in making this decision: (1) the ultimate cost to the ratepayers, (2) this cost in relation to other feasible alternative solutions, (3) the timeliness within which the project could be completed, (4) the feasibility

of whether the project could ultimately be completed as proposed, (5) the scalability of the project, and (6) the environmental impact of the project. Based upon the 1997 Supply Order, the proposal must also meet the maximum consumption needs of KAWC's customers through 2020.

Lexington also believes that regardless of whether KAWC's application is granted, the proposed four-foot crest gates on Dam 9 should be constructed to serve as an enhancement to the available raw water supply. Unfortunately, based upon the evidence regarding these gates, it does not appear that they could be utilized as a permanent solution to the water supply problem.

In addition, Lexington requests that the Commission continue to encourage the participation of the BWSC in any project that is ultimately approved. Not only will this enhance regionalization, but the evidence indicates that such participation will serve to reduce the costs of any project to KAWC's ratepayers.

Lexington is largely in agreement with the testimony of, and the arguments made by, the witness for the Attorney General, Scott Rubin, and further notes that the Attorney General is legally tasked with representing the interests of the consumers (ratepayers) of KAWC in this matter. KRS 367.150(8). Lexington is also a member of the BWSC, whose independent study of the water supply deficit issue ultimately concluded that a treatment plant on Pool 3 of the Kentucky River was a preferable solution. (BWSC Response to CAWS' Data Request No. 1(b)). However, Lexington must ultimately defer to the authority of the Commission to determine whether KAWC's proposal is the appropriate solution. KRS 278.020.

Mr. Rubin has recommended that any solution to this problem contain certain conditions that should be placed upon KAWC related to a project cost cap (to ratepayers), conservation efforts, and advance water supply planning. (Pre-filed Testimony of Rubin, page 4; Rebuttal Testimony of Rubin, page 11). Lexington agrees with these recommendations, the latter two of which have also been agreed to in concept by KAWC. (Hearing Testimony of Rowe, Video Transcript, November 11-26-07, 01:29:00-01:32:15 PM; Pre-filed Rebuttal Testimony of Bridwell Rebuttal, pages 8-10).

Although the cost-capping issue may be somewhat unique in a water utility construction case, there is legal authority for the Commission to implement similar type-measures to ensure that there are not excessive costs (see, e.g., Kentucky Utilities Co. v. Public Service Commission, 252 S.W.2d 885 (Ky., 1952)), and the imposition of such a cap would go a long way in assuring the ratepayers that any solution to the water supply deficit is truly cost-effective.

Moreover, the Commission has previously placed conditions on KAWC pursuant to its general inherent authority (see multiple final order from Commission Case No.'s 2002-00317 and 2006-00197 involving the transfer of ownership of KAWC, and the placement of numerous conditions on the company by the Commission in order to gain approval), and as pointed out by Mr. Rubin, the Commission could at least attempt to place such a condition on KAWC, and then let it decide whether it wished to proceed with the proposed project in light of the potential risk. (Hearing Testimony of Rubin, Video Transcript, 11-27-07, 04:24:08-04:25:02 PM).

Mr. Rubin testified that KAWC's proposal is roughly the same in total net present value cost as LWC's proposal, or is within an acceptably reasonable variance. (Rebuttal

Testimony of Rubin, page 10, lines 3-14). The ultimate cost of a LWC pipeline is driven by how much water is purchased.

Under LWC's proposal of a 2:1 take or pay arrangement, which actually only guaranteed up to 25 MGD in pipeline (not treatment) capacity, there was some acknowledgment by all of the financial experts (including LWC's) that LWC's proposal approached or exceeded the cost of KAWC's proposal if 20-25 MGD in reserve was needed from the year 2010 forward (Hearing Testimony of Rubin, Video Transcript, 11-27-07, 4:14:20-4:15:50 PM; Hearing Testimony of Louisville Water Company witness Edward Wetzel, Video Transcript, 11-28-07, 06:36:00-58 PM). In addition, it is unclear whether LWC's proposal provides Central Kentucky with all of the water needed in the event of a drought, or what the ultimate additional cost would be in order to ensure this result.

If it is assumed that the LWC proposal is feasible, when the overall cost of its proposal is compared to KAWC's application the costs are relatively the same – if KAWC is required to provide up to 20 MGD of additional water beginning in 2010. Therefore, cost is not the driving factor in this case. Under any permanent solution, the ratepayers are going to pay a significantly greater amount for water. (Kentucky-American Exhibit No. 12, March 6, 2008 Hearing).

Based upon the permit-reliant water supply numbers and the 1997 Supply Order, the scale of both proposals is reasonable. The major cost of the KAWC proposal is in the treatment plant. Once constructed, the cost of adding additional treatment becomes incrementally less, as much of the initial construction cost is fixed, even if the proposed 20 MGD is scaled down. (KAWC Post Hearing Data Response No. 10; Post-Hearing Bid Information).

The evidence also indicates that there is a substantial likelihood of obtaining at least 30 MGD treatment from Pool 3 in the future, without crest gates being added onto the dam. (Hearing Testimony of Svindland, Video Transcript, November 27, 2007, 6:27:50-6:29:50; Attorney General Exhibit No. 4, Surface Water Permit Fact Sheet Dated January 10, 2007). Because the plant would already exist and the 42" pipe could handle a 30-35 MGD load without any significant upgrade, this could allow additional treatment capacity to be added in the future at a relatively low cost (Hearing Testimony of Svindland, Video Transcript, 11-27-07, 05:37:35-40 PM). Therefore, to the extent that longer-term planning (beyond the year 2030) is a reasonable factor to take into consideration (and this is debatable), the KAWC proposal appears to have the ability to have some additional raw water accessed from the pool without going to the Ohio River.⁴

Lexington also requests that any approved project meet or exceed environmental requirements. Based on the record, KAWC has obtained the necessary environmental permission to proceed with its proposal, and has also performed some analysis of the cultural impact of this project. (Pre-filed Rebuttal Testimony of KAWC's witness Cyrille R. Whitson, CWD, PWS, pages 2-6; Hearing Testimony Whitson, Video Transcript, 11-18-07, 09:08:40-50 AM; Hearing Testimony of Svindland, Video Transcript, 11-27-07, 05:35:20-40 PM). To date, LWC has only performed minimal analysis in this area, and it did not involve a specific route beyond Shelbyville. (Revised Pre-filed Supplemental Testimony of Heitzman, page 8 and Exhibits No.'s 9 and 10).

⁴ If four foot crest gates are constructed on Dam 9 there would be potentially 0.9 billion gallons of additional water available. (February 28, 2008 letter from Reeder to State Senator Julian Carroll, attached to the Testimony of Martin Solomon). Ideally, this would eliminate or significantly alleviate the need for any additional source of supply.

LWC has acknowledged that the earliest the construction of the pipeline could be completed would be 2012, but now believes that up to 10 MGD of additional water could be provided by Versailles and Frankfort on a short-term basis. (Revised Pre-filed Supplemental Testimony of Heitzman, pages 3-6). However, there are serious flaws in this argument, as it is not clear that even with improvements to the Versailles, Frankfort, and KAWC systems, the water would be available for consumption by KAWC's customers when needed. (Kentucky-American's Exhibits No.'s 2, 3 (p. 3), 4, (p. 2 of 5 of attachment), and 5 from March 5, 2008; Hearing Testimony of Bridwell, Video Transcript, 03-06-08, 08:12:08-08:15:00 AM).

There are more significant issues with LWC's proposal, beginning with whether a pipeline could even feasibly be located in the I-64 corridor. In addition to this issue, at a minimum, the following questions would need definitive answers prior to the proposal being complete enough for consideration by the Commission. What entity(s) can or will pay for, construct, own and/or operate various sections of the pipeline? (See KRS 96.265, Hearing Testimony of Heitzman, Video Transcript, 11-28-07, 02:00:12-36, 05:01:30-05:02:20 PM; Hearing Testimony of Rubin, Video Transcript 11/27/07, 3:05:45-3:07:20). What will be the additional costs related to such a project if multiple entities are involved? What will be the type and level of opposition to the ultimate designed route? (Heitzman, Video Transcript, 11-28-07, 04:29:00-26 PM; Bridwell, Video Transcript). Is LWC even willing to guarantee that 20 MGD a day will be available to KAWC under all circumstances; and, if so, what will be the additional cost for doing so? Will the proposed wholesale rate survive a challenge by LWC's other customer classes? (Heitzman, 11-28-07, 05:51:22-

05:54:45 PM). These are not small matters, and greatly impact not only the cost of such a proposal, but whether it could ever be realistically constructed in a timely manner.

Nevertheless, Lexington does not favor one proposal over another in this case, and strongly believes that any ultimate solution needs to have conditions placed upon it in order to protect the ratepayers. For the last several years Lexington's participation in the issue of the water supply problem has been through its membership in the BWSC. It is not desirous of re-opening the contentious debate from earlier this decade which saw Lexington file and drop a condemnation lawsuit to obtain the assets of KAWC (Lexington-Fayette Urban County Government v. Kentucky-American Water Company, et al., Civil Action No. 03-CI-2804, Fayette Circuit Court, Third Division), and led to a ballot issue on whether Lexington should continue to pursue such an action.⁵ These actions significantly divided the community and ultimately resulted in a substantial loss of money, and perhaps more importantly, time and resources that could have been spent on addressing the issue that is pending before the Commission in this case.

Therefore, Lexington respectfully requests that the Commission consider all of the evidence in this matter and make a timely decision that is in the best interest of KAWC's ratepayers and the Central Kentucky Region. With respect to any ultimate solution to the water supply problem, Lexington requests that the Commission adopt Mr. Rubin's recommendations regarding a cost cap, conservation, and future water planning. In addition, the Commission should strongly encourage the continued participation of the BWSC in any project, as well as the placement of the crest gates on Dam 9 of the Kentucky River.

⁵ The vote was decisively against pursuing condemnation against KAWC.

Moreover, in the event that the KAWC is application is denied, Lexington further requests that the Commission take sufficient steps to ensure that the water supply problem is otherwise timely resolved, whether it be through a proposal similar to that of the LWC, or through another solution.

IV. CONCLUSION

The Lexington-Fayette Urban County Government, having been a participant in the water supply issue for many years and at many different levels (most recently through its participation as a member of the BWSC), appreciates the difficulty that is involved in making a decision in this case. However, the water supply problem has remained unresolved long enough. If it is not timely addressed, it is only a question of when, and not if, the residents of Central Kentucky will suffer dramatic negative consequences that may well surpass the cost of any solution to this problem. Therefore, Lexington respectfully requests that the Commission, as the lawful authority in this matter pursuant to KRS 278.020, fully consider all of the evidence and make the decision that is in the best interest of KAWC's ratepayers and Central Kentucky as soon as possible.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that an original and eight (8) copies of this document was served by hand delivery to Executive Director, Public Service Commission, P.O. Box 615, 211 Sower Boulevard, Frankfort, Kentucky 40602-0615; furthermore, it was served by mailing a copy by first class U.S. Mail delivery, postage prepaid, on the following, all on this the 20th day of March 2008:

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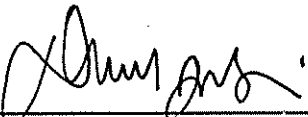
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