

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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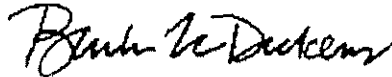
IN THE MATTER OF:)

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


POST-HEARING BRIEF OF LOUISVILLE WATER COMPANY

Respectfully submitted, .



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POST-HEARING BRIEF OF LOUISVILLE WATER COMPANY

Louisville Water Company (“LWC”), by counsel, hereby submits its post-hearing brief recommending that the Public Service Commission of the Commonwealth of Kentucky (“Commission”) deny the application of Kentucky-American Water Company (“KAWC”) for a certificate of public convenience and necessity (“CPCN”) authorizing the construction of Kentucky River Station II, associated facilities, and a transmission main (the “Pool 3 proposal”). In short, LWC requests denial of KAWC’s application because KAWC has failed to present substantial evidence that the Pool 3 proposal: (i) will not result in wasteful investment and duplication of facilities; and (ii) is reasonable under the foreseeable circumstances.¹

I. Summary of Argument.

The Commission should deny KAWC’s application to shoulder its ratepayers with the financial burden of constructing a new \$160 million water treatment plant and pipeline² that will

¹ Consistent with ordering paragraph 7 of the Commission's December 21, 2007 order in this matter, LWC has addressed the issues identified in Appendix E of that order in Appendix E to this brief.

² The net present value of the Pool 3 proposal is approximately \$283 million. (*See* "Supplemental Report: Financial Analysis of the Pool 3 vs. Louisville Pipeline Options to Serve

be operated at thirty-percent capacity (6 MGD) for virtually all of the next twenty-three years. While Central Kentucky certainly needs a solution to its long-running water supply deficit, it does not need the wasteful expense of KAWC's Pool 3 proposal. KAWC overstates the urgency of its supply deficit to justify its failure to thoroughly evaluate the numerous reasonable alternatives to its Pool 3 proposal. Instead, it should have approached LWC and others in a cooperative manner to explore whether there could be alternative sources of supply and other interim measures that could best benefit ratepayers.

Had it done so, KAWC would have learned more about: (i) the 2 MGD of treated water presently available, and 5 MGD available by 2009, from Versailles; (ii) the 5 MGD of treated water available from Frankfort by 2010 (by means of Frankfort's connection with LWC); (iii) the 10 MGD available by 2010 as a result of the installation of crestgates on Dam 9 of the Kentucky River, providing 900 million gallons of additional supply; (iv) the 3 MGD presently available by reducing KAWC's unaccounted-for water figures; (v) the 10 MGD presently available through the implementation of conservation measures to reduce KAWC's customers' reasonable demand under maximum consumption; (vi) the 25 MGD of treated water available by 2012 through the Louisville Pipeline; and (vii) other measures perhaps yet to be discovered. In total, these alternative solutions can provide nearly three times the amount (approximately 58 MGD) of the capacity KAWC's Pool 3 proposal would create. Furthermore, they will do so at much lower cost than KAWC's Pool 3 proposal.

Instead, KAWC concentrated on increasing shareholder wealth. Hand-in-hand with this objective, KAWC cast blame upon LWC and others for identifying "ideas" that would provide

Central Kentucky Water Customers," February 2008 (attached as Exhibit 1 to Dr. Wetzel's Supplemental Testimony filed on February 11, 2008) at Table 2-1 on p. 2-3 (hereinafter, "Supplemental R. W. Beck Report").)

greater benefit to KAWC and its ratepayers. But KAWC forgets that the burden of proving (by substantial evidence) it has thoroughly evaluated all reasonable alternative “ideas” rests with it, alone. In fact, it bears the burden of proving its entire case by substantial evidence. KAWC has utterly failed to meet that burden.

Although Central Kentucky has a water supply deficit, the need is not so great that KAWC should be entitled to make wasteful investments in duplicate facilities, steadfastly ignore reasonable alternatives, and dispense with reasonable considerations of cost, route, and source of supply. The alternative measures described above (and in more detail in this brief) could provide KAWC with approximately 58 MGD of water from sources other than the proposed Pool 3 facilities. Still, the record is devoid of any evidence that it seriously evaluated these alternatives.

Central Kentucky deserves more. The Louisville Pipeline provides a broad, regional solution that will save ratepayers money, compared to KAWC’s proposal. The Louisville Pipeline ensures that Kentucky money remains invested in Kentucky. The Louisville Pipeline would serve as a backbone of a water infrastructure grid between the two largest cities in the Commonwealth. Through that backbone, Central Kentucky will receive a two-river solution to its water supply deficit: *access to both the Kentucky River and the Ohio River*. The Commission should deny KAWC’s application as a result of KAWC’s failure to meaningfully evaluate the Louisville Pipeline, other reasonable alternatives and other interim measures.

II. Statement of the Facts.

Given the Commission’s longstanding familiarity with this matter, LWC deferred the restatement of the procedural history and factual background to Attachment 1 to this brief.

III. Argument & Analysis.

A. Standard for Reviewing an Application for a CPCN.

The Commission stated at both hearings that KAWC's application will be evaluated based upon the elements of (i) need; (ii) wasteful investment or duplication of facilities; and (iii) reasonableness under the foreseeable circumstances. (Stmnt. of Chairman Goss, November 2007 Hearing Transcript, v. 1 at 7-8.) Previous Commission cases have expanded upon this standard as follows.

In order to obtain such a certification, the utility must demonstrate a need for the proposed facilities and an absence of wasteful duplication. *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, Ky., 252 S.W.2d 885 (1952).

Need is demonstrated by showing: [A] substantial inadequacy of existing service, involving a consumer market sufficiently large to make it economically feasible for the new system or facility to be constructed and operated. ... The inadequacy must be due either to a substantial deficiency of service facilities, beyond what could be supplied by normal improvements in the ordinary course of business; or to indifference, poor management or disregard of the rights of consumers, persisting over such a period of time as to establish an inability or unwillingness to render adequate service. *Id.* at 890.

"Wasteful duplication" is defined as "an excess of capacity over need" and "an excessive investment in relation to productivity or efficiency, and an unnecessary multiplicity of physical properties." *Id.*

In the Matter of The Petition of the Hardin County Water District No. 1 for a Certificate of Convenience and Necessity for Approval of Financing of the Construction and the Issuance of Bonds and the Approval of Rates to Be Charged Its Retail and Wholesale Customers, Kentucky Public Service Commission, Case No. 90-019, Order of February 21, 1991 at 2 (hereinafter "Case No. 90-019").

The Commission has further clarified that an evaluation of “wasteful duplication” necessitates consideration of whether an applicant has performed a “thorough review of all reasonable alternatives[.]” *In the Matter of the Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for the Construction of Transmission Facilities in Jefferson, Bullitt, Meade, and Hardin Counties, Kentucky*, Kentucky Public Service Commission, Case No. 2005-00142, Order of September 8, 2005 at 6 (hereinafter “Case No. 2005-00142”). The “Commission is mindful of its duties in administering the law of the Commonwealth, and a key element of that law is the admonition from over half a century ago to guard against ‘multiple sets of rights of way and a cluttering of the land with [utility facilities].’” *Id.* at 5. Accordingly, an applicant’s failure to demonstrate a “thorough review of all reasonable alternatives” constitutes grounds for denying an application. *See id.*

Finally, KAWC must present “substantial evidence” that its application satisfies each of the above-referenced elements. As recognized in *American Beauty Homes Corp. v. Louisville and Jefferson County Planning and Zoning Commission*, Ky., 379 S.W.2d 450 (1964) and its progeny, “Unless action taken by an administrative agency is supported by substantial evidence it is arbitrary[.]” in violation Section 2 of the Kentucky Constitution. *Id.* at 456 (citation omitted); *see also Hilltop Basic Resources, Inc. v. County of Boone*, Ky., 180 S.W.3d 464, 467 (2005); *R. B. Hacker v. Baesler*, Ky., 812 S.W.2d 706, 709 (1991); *Board of Adjustments, Bourbon County v. Brown*, Ky. App., 969 S.W.2d 214, 216 (1998). Accordingly, in the absence of “substantial evidence” that the Pool 3 proposal satisfies the criteria described above, KAWC’s application should be denied.

B. KAWC Overstates the Urgency of the “Need.”

LWC does not dispute that KAWC’s ratepayers have need for an adequate supply of water. It does, however, dispute the urgency that KAWC has used to divert attention from the flaws in its Pool 3 proposal. In short, KAWC has approached this case as though its procrastination is cause for the Commission’s emergency. As Mr. Heitzman testified:

... KAWC's urgency to secure a CPCN for its Pool 3 proposal is purely a manufactured emergency. Quite simply, KAWC does not need a new water treatment plant and pipeline in order to secure an additional 10 MGD water supply for its customers by 2010. To the contrary, if KAWC would shift its focus away from increasing shareholder assets and concentrate, instead, on serving its customer base, it would see that the better solution lies with implementing interim measures now so that the Louisville Pipeline can be completed by 2012.

(Supp. Test. of G. Heitzman at 17:7-23.)

Rather than rise to its regulatory responsibilities, KAWC simply rushed to pull together a plan that would allow it to incorporate new assets into its rate base.³ It turned a blind eye to less expensive avenues of interim relief like purchasing finished water from Versailles, purchasing finished water from Frankfort, improving storage at Pool 9 through the erection of crest gates on Dam 9, reducing unaccounted for water, and improving conservation. Then, it blamed everyone else (including LWC and the KRA) for not performing the thorough evaluations of reasonable alternatives that the law requires KAWC to conduct. The Commission previously admonished KAWC that “[t]he responsibility to develop an adequate and reliable source of water supply for [KAWC]’s customers is the direct obligation of [KAWC] itself.” *In the Matter of an Investigation of the Sources of Supply and Future Demand of Kentucky-American Water*

³ KAWC has suggested that its Pool 3 proposal will result in it seeking a nearly forty percent rate increase (not counting the fifteen percent increase approved in November of 2007) by 2010. (See KAWC's Supp. Resp. (dated Feb. 29, 2008) to Commission First Interrogatory No. 31.)

Company, Kentucky Public Service Commission, Case No. 93-434, Order of August 21, 1997 at 6 (hereinafter "Case No. 93-434"). That obligation does not yield to any increased urgency created by KAWC's dalliance.⁴

As the Commission noted at its March 2008 hearing in this matter, its decision in this case "affects the citizens of Central Kentucky for decades to come...." (March 2008 Hearing Transcript, v.2 at 201:2-3.) Yet, KAWC has refused to meaningfully evaluate the Louisville Pipeline, stating that the Louisville Pipeline will take too long to complete. (Test. of L. Bridwell, March 2008 Hearing Transcript, v.2 at 38:13-18.) LWC President Greg Heitzman testified LWC will have the Louisville Pipeline operational by 2012. (See Supp. Test. of G. Heitzman at 4:23-24 ("... July of 2012, when the Louisville Pipeline would be operational and capable of supplying 25 MGD of water...").) KAWC's suggests this 2012 estimate is not feasible, yet Ms. Bridwell's testified that, absent significant public opposition, a pipeline connecting Louisville and Lexington "can be designed, engineered, and built within three years." (Test. of L. Bridwell, March 2008 Hearing Transcript, v.2 at 40:22-25.) Additionally, as discussed more fully in sections III.C and III.D, below, the parties in this matter have identified a number of potential interim solutions that KAWC could have explored to address water supply issues arising between now and July of 2012.

Accordingly, KAWC's application should not be evaluated in terms of whether there is a "need" for the Pool 3 proposal by 2010. It should be evaluated in terms of whether there is a "need" for the Pool 3 proposal in light of the wasteful investment and duplication of facilities it

⁴ By creating its own emergency, KAWC also diverts attention from the fact that constructing the Pool 3 facilities effectively reduces the economic feasibility of future condemnation by LFUCG. At the very least, KAWC's shareholder would benefit by KAWC becoming a significantly more expensive target – if not a less likely target –for LFUCG.

will create, as well as its unreasonable cost, publicly-opposed pipeline route, and questionable source of supply. The Commission should deny KAWC's application until KAWC meets its regulatory responsibilities to "thoroughly evaluate all reasonable alternatives," and it presents substantial evidence of a "need" so urgent to require approval of a Pool 3 proposal that does not otherwise serve the public convenience and necessity.

C. KAWC Has Not Provided Substantial Evidence That Its Pool 3 Proposal Will Avoid Wasteful Investment and Duplication of Facilities.

Had KAWC met its responsibility to thoroughly evaluate all reasonable alternatives, the wasteful investment and duplication of facilities attendant to its Pool 3 proposal would have become obvious. First, KAWC's Pool 3 proposal completely overlooks LWC's ability to use its existing water treatment plant reserve capacity to address KAWC's water supply deficit. Second, KAWC spent virtually all of the 1990's trumpeting the virtues of a pipeline to Louisville, and it has no compelling or adequate reasons for refusing to thoroughly evaluate LWC's improved proposal for a Louisville Pipeline. Likewise, KAWC has no compelling or adequate reasons for refusing to thoroughly evaluate the many other reasonable alternative and interim measures that have been identified in this proceeding. Accordingly, the Commission should deny KAWC's application given KAWC's lack of substantial evidence that the Pool 3 proposal will "avoid wasteful investment and duplication of facilities,".

1. The Louisville Pipeline Uses Existing Water Treatment Plants and Existing Water Treatment Plant Capacity to Solve KAWC's Water Supply Deficit.

The Commission has previously noted it is "mindful of its duties in administering the law of the Commonwealth, and a key element of that law is the admonition from over half a century ago to guard against 'multiple sets of rights of way and a cluttering of the land with [utility facilities]." (Case No. 2005-00142, Order of September 8, 2005 at 5) The Pool 3

proposal will result in an unnecessary multiplicity of physical properties because LWC already has two water treatment plants that can provide an adequate supply of treated water to Central Kentucky.

As Mr. Heitzman explained in his direct testimony:

Louisville Water Company has a virtually unlimited source of water supply in the Ohio River, with enough reserve capacity to supply the current and future water supply deficits of the Bluegrass Region. Nearly ninety billion gallons of water per day pass Louisville Water Company's two treatment plants. Together, those treatment plants have a current capacity of 240 million gallons per day, and those plants can be easily expanded to a capacity of 300 MGD.

(*Id.* at 3-4: 18-24, 1-2 (emphasis removed).)

In fact, LWC is currently in the process of creating that expanded reserve capacity:

In 2007 a study conducted by CH2MHill (previously filed with the Commission in response to KAWC initial data request number 50) confirmed that the firm capacity of LWC treatment facilities is 240 MGD. In order to assure treatment capacities are maintained in excess of 15% above the maximum demand day in the future, LWC included capital improvement projects to expand the B.E. Payne Water Treatment Plant ("BEPWTP") from 60 MGD to 90 MGD and [the] Crescent Hill Water Treatment Plant ("CHWTP") from 180 MGD to 210 MGD in its 2008 capital improvement plan. BEPWTP expansion projects are budgeted and scheduled for 2010 through 2012, and CHWTP expansion projects are budgeted and scheduled for 2013 through 2017. The 2008 capital improvement plan was approved by the LWC Board of Water Works on November 13, 2007. Therefore, LWC currently has 35 MGD available capacity, and with these improvements, [it] will have 65 MGD available capacity by 2012 [(when the Louisville Pipeline will be complete)], with 95 MGD available capacity by 2017.

(Supp. Test. of G. Heitzman at 13-14:18-25, 1-4.)

KAWC, alternatively, proposes to build a brand new water treatment plant on Pool 3 of the Kentucky River. (*See Application.*) It does this, however, with no consideration of the efficiencies associated with utilizing LWC's existing capacity (or expanding it) in comparison to

creating entirely new capacity. KAWC acknowledges that "[i]t is more cost effective to utilize existing treatment capacity than to expand it." ("Remarks by Linda Bridwell, Planning Engineer, Kentucky-American Water Company to the Kentucky River Authority," LWC Hearing Ex. 7.) Furthermore, KAWC acknowledges that it is generally "cheaper to expand or upgrade existing facilities" than to create new facilities. (Test. of L. Bridwell, Hearing Transcript, v.1 at 304:3-4.) Therefore, the combination of LWC's existing reserve treatment capacity, coupled with any expansions or upgrades to that capacity is – by KAWC's own admission – more efficient than creating excess, duplicate capacity such as a new water treatment plant on Pool 3 of the Kentucky River.

The Pool 3 proposal also constitutes wasteful investment because the few times it will be needed do not justify the high level of capital expenditure associated with the Pool 3 proposal. KAWC's intentions to operate the Pool 3 facilities at a continuous 6 MGD level is not based on need; instead, it reflects an engineering and business decision to maintain a "base flow" of 6 MGD. (*Id.* at 76:16-22.) That is, it simply allows KAWC to offset its treatment operations elsewhere, except in two instances: (i) the "one, two, or three days a year" that KAWC needs the Pool 3 plant as a peaking plant; or (ii) in the event a once-in-130-years drought recurs. (Test. of L. Bridwell, November 2007 Hearing Transcript, v.2 at 53:7-11.)

From a percentage standpoint, then, the Pool 3 plant is needed only a minute percentage of time, raising the legitimate question of why ratepayers should bear the uncontestedly higher capital cost of the Pool 3 proposal in the form of a series of rate increases totaling nearly forty percent.⁵ (See KAWC Supp. Resp. to PSC Staff Init. Data Request 31(a) (indicating a

⁵ This, just following a recently-approved fifteen percent overall revenue increase in Kentucky Public Service Commission Case No. 2007-00143. (See *id.* at Order of November 30, 2007.)

cumulative projected rate increase of 36.81% as of 2010).) In comparison, the significantly lower capital cost of the Louisville Pipeline proposal will result in a much lower rate impact upon KAWC's customers. (See Supplemental R. W. Beck at Tables 4-1, 4-2.) Specifically, R. W. Beck estimates that KAWC's Pool 3 proposal will result in an average rate increase of 50.66%, compared to a projected increase of only 16.17% for a publicly-owned Louisville Pipeline. (See *id.*) KAWC's Pool 3 proposal imposes a significant cost premium upon its ratepayers.

Along with this unnecessary, expensive water treatment plant, KAWC also proposes to construct a pipeline that will rip through some of the Commonwealth's most scenic, historic properties. (See Application; *see also* Test. of N. Rowe, Hearing Transcript, v. 1 at 100:1-9 (stating that approximately forty-five percent of the pipeline "would be in some type of private easements" on private property).) And despite the admonition that the Commission should "guard against 'multiple sets of rights of way and a cluttering of the land with [utility facilities]," (Case No. 2005-00142, Order of September 8, 2005 at 5), KAWC has failed to present any evidence whatsoever that its proposed pipeline route will avoid creating new rights of way or otherwise cluttering pristine land.⁶ The Louisville Pipeline, conversely, "will be installed along an interstate [corridor], in an area that is already largely developed and already encumbered with other utility facilities." (See Rebuttal Test. of G. Heitzman at 11:9-10; *see also* Louisville Pipeline Route Map attached hereto as Exhibit 1.)

Therefore, there is no "substantial evidence" that KAWC's Pool 3 proposal will avoid "multiple sets of rights of way" and an "unnecessary multiplicity of physical properties." (Case

⁶ In fact, KAWC estimates that it presently has less than ten percent (10%) of the easements that it must acquire from the landowners along its proposed pipeline route. (See KAWC Resp. to Post-Hearing Data Request No. 1.)

No. 2005-00142, Order of September 8, 2005 at 5.) To the contrary, the Pool 3 proposal will actually create “multiple sets of rights of way” and an “unnecessary multiplicity of physical properties.” *See id.* The Louisville Pipeline violates no such admonition. It proposes to use existing water treatment plants, existing water supply, and existing water treatment capacity to install a pipeline along a thoroughly developed and already-encumbered interstate corridor. KAWC has not provided “substantial evidence” that its Pool 3 proposal will “avoid wasteful investment and duplication of facilities.” The Commission should deny KAWC’s Application.

2. KAWC Has No Compelling or Adequate Reasons for Refusing to Consider the Louisville Pipeline or Other Reasonable Alternatives.

The Commission has further clarified that an evaluation of wasteful investment and duplication of facilities necessitates consideration of an applicant’s “thorough review of all reasonable alternatives[.]” (Case No. 2005-00142, Order of September 8, 2005 at 6). KAWC has presented very little evidence, and certainly not substantial evidence, that it performed a “thorough review.”

As an initial matter, KAWC cannot legitimately dispute whether the Louisville Pipeline is a “reasonable alternative.” KAWC spent virtually all of the 1990’s trumpeting the virtues of a pipeline to Louisville to resolve its lack of adequate water supply on the Kentucky River. *See In the Matter of Application of Kentucky-American Water Company to Increase Its Rates*, Kentucky Public Service Commission, Case. No. 2000-00120, Order of November 27, 2000 at 39 (“Since December 1992, [KAWC] has openly displayed its preference for a pipeline solution”) (hereinafter “Case No. 2000-00120”). According to KAWC, the Bluegrass Water Project was the “best alternative” from a source of supply, cost, and environmental perspective. (*See* “Bluegrass Water Project Update,” LWC Hearing Exhibit 2 at 1-3.) As the “best alternative,” the Bluegrass Water Project plan to “purchase treated water from Louisville Water Company

[would] eliminate the need for additional investments in plant capacity to overcome the treatment plant deficit.” (*Id.*) Furthermore, because the “unpredictability of the [Kentucky River] flows continues to be a serious concern to those living in Central Kentucky,” KAWC followed a “philosophy of a strong responsibility to customers and heightened awareness of environmental concerns” in looking to LWC for access to the Ohio River, that “continual source of supply.” (*Id.*) Even the O’Brien & Gere Report conceded that purchasing treated Ohio River water from LWC was a reasonable alternative. (*Id.* at 3.) Thus, there can be no claim but that the Louisville Pipeline alternative is a reasonable alternative.

Accordingly, the threshold question is whether KAWC has evaluated – among other reasonable alternatives – the current Louisville Pipeline proposal. Ms. Bridwell’s testimony at the March 2008 hearing dispelled any illusions that KAWC has done so.

Q. [H]ave representatives of Kentucky-American Water sat down across the table from Louisville Water at any point since November, since the November hearing, and said, “You know what, is there some way we can resolve this? Is there some method by which you could provide us water more reasonably than construction of the water treatment plant at Pool 3?”

A. No, sir.

(Test. of L. Bridwell, March 2008 Hearing Transcript, v.2 at 80:1-8.)

KAWC also admits that it has not asked LWC for an updated pipeline proposal in the last seven years.⁷ (See Test. of N. Rowe, November 2007 Hearing Transcript, v.1 at 58:3-9). It

⁷ The idea that KAWC was anonymously seeking proposals from LWC through the BWSC is nonsense. KAWC could not legally be a member of the BWSC. (See Direct Test. of L. Bridwell at 22:17.) Similarly, the regulatory obligation to address KAWC’s source of supply issue lay with KAWC, not the BWSC. See 807 KAR 5:066, Section 10(4). KAWC and the BWSC also criticize LWC for allegedly “chang[ing] its proposals” to the BWSC on numerous occasions. This criticism fails to acknowledge that LWC was merely responding to the many

admits that its own consultant, Gannett-Fleming Engineers, was engaged only to perform "an independent review of the previous studies and recommended solutions," (*see* Direct Test. of L. Bridwell at 25:27-28 (emphasis added)), rather than all other reasonable alternatives. (*See also* Direct Test. of R. Svinland at 2-5:Q9-12 ("Within a week of the March 2006 PSC informal conference a schedule [for the Pool 3 proposal] was in place.")) KAWC "never considered a route north of I-64" as a potential pipeline route. (Test. of L. Bridwell, November 2007 Hearing Transcript, v.1 at 234:10-16.) It also admits that the O'Brien & Gere Report, which studied an old LWC proposal "failed to comply with [its] one basic doctrine: [to] compare 'apples to apples.'" (Test. of L. Bridwell, Hearing Transcript, v.2 at 154:19-22.)

KAWC also failed to consider the cost-savings that will be realized now that "LWC has agreed to fund the cost of the Louisville Pipeline from its existing water facilities to the intersection of I-64 and Highway 53 in Shelby County." (Rebuttal Test. of G. Heitzman at 12:19-20.) "The project cost estimate of [this portion of the Louisville Pipeline] is \$35.1 million." (*See id.* at 4:43.) This fact has been repeatedly communicated to KAWC, and yet KAWC has continued to completely ignore the significant cost savings this commitment will realize, not only for the benefit of KAWC's ratepayers, but also for the ratepayers of the Shelby and Franklin County water providers.

Finally, as many members of the LFUCG Council noted in a November 27, 2007 letter to the Commission, there has not been a sufficient evaluation of the consequences of the Frankfort and Shelby County water providers' decision to purchase water from Louisville. (*See id.*) Frankfort's decision increases the availability of additional public financing for the Louisville Pipeline. (*See* Rebuttal Test. of G. Heitzman at 5:8-14.) It also extends the Louisville Pipeline

different requests that it received from the BWSC. (*See* Test. of G. Heitzman, Hearing Transcript, v. 3 at 316:7-22.)

more than halfway to Lexington, thereby decreasing KAWC's cost of investing in such a solution. (*See id.* at Exhibit 1.) Thus, the Louisville Pipeline would be complete if KAWC would merely pivot the Franklin County portion of its proposed Pool 3 pipeline from "eleven o'clock to nine o'clock." Moreover, it would be complete without the added monetary expense of an unnecessary water treatment plant or the temporal and monetary expense of the numerous condemnation actions likely to be required with respect to the more than ninety percent (90%) of easements KAWC has still not obtained. (*See id.*) Yet, KAWC openly admits its failure to discuss these issues directly with LWC. (Test. of L. Bridwell, March 2008 Hearing Transcript, v.2 at 80:1-8.)

This pattern of behavior is not atypical for KAWC. For example, KAWC "can't give [Chairman Goss] a good reason" why it never looked at Pool 3 during the approximately ten years of proceedings before the BWS Consortium commissioned the O'Brien & Gere report. (Test. of N. Rowe, November 2007 Hearing Transcript, v.1 at 184:20-21.)

With the reconstruction of Dam 9, KAWC has not conducted an updated safe yield analysis to evaluate whether the safe-yield of Pool 9 remains the 35 MGD that it claims. (*See* Test. of L. Bridwell, November 2007 Hearing Transcript, v.2 at 140-41:16-25, 1-6.) KAWC has not "gone back and recalculated the safe yield after the implementation of the valves..." (*See id.* at 140-41:25, 1-3.) And it does not "know actually what yield is available based on actual experience with the valves[.]" (*See id.* at 141:4-6.)

It similarly has not evaluated the possibility of expanding water storage at Pool 9 of the Kentucky River –by the installation of the crest gates budgeted by the KRA, for example – as a means of addressing its supply issue. (*See id.* at 58:17-23; *see also* KAWC Resp. to CAWS's Second Supp. Data Request No. 14 (stating that "KAW has not studied [the] option" of installing

crest gates or other options to “provide additional water” in Pool 9 of the Kentucky River).) This, despite the fact that the installation of crestgates, alone, would provide an additional supply of 900 million gallons of water in Pool 3 to address KAWC’s interim needs. (*See* Test. of L. Bridwell, March 2008 Hearing Transcript, v.2 at 33-34:24-25, 1-2.) This additional supply could provide KAWC with up to 10 MGD over a period of ninety days.

And despite being made aware (in the spring of 2006) of the fact that Versailles could also provide KAWC with an additional five MGD of water from Pool 5 of the Kentucky River, KAWC still has not thoroughly evaluated purchasing water from Versailles. (*See* Test. of L. Bridwell, November 2007 Hearing Transcript, v.2 at 77:8-12; *see also* Test. of L. Bridwell, March 2008 Hearing Transcript, v.2 at 26:2-7 (admitting that KAWC has not even investigated such basic facts as “whether piping would also have to be included as part of a backflow prevention” if KAWC were to receive treated water from Versailles).) It admits this, even though its cursory review of the possibility indicates that the cost of securing this additional source of supply would be less than one percent (1%) of the total \$160 million or more cost of the Pool 3 proposal. (*See* Test. of L. Bridwell, March 2008 Hearing Transcript, v.2 at 26:6-7 (testifying that KAWC could receive an interim supply of water from Versailles for “half a million dollars... or less”).) USGS data states flow data for Pool 5 never dropped below the level at which Versailles’s DOW permit would have restricted withdrawal, despite Ms. Bridwell’s testimony to the contrary. Therefore, the 5MGD from Versailles would have been available with the infrastructure improvements suggested herein.

KAWC’s evidence also reveals that it has failed to thoroughly evaluate its ability to purchase up to 5 MGD of treated water from Frankfort. Mr. Heitzman testified:

LWC's ongoing engineering and design work on the Louisville Pipeline proposal... confirms that – by July of 2010 – it will have

completed a pipeline connecting to the Frankfort Plant Board. (*See infra.*) As a result of LWC's connection to the Frankfort Plant Board system, the Frankfort Plant Board will be able to devote up to an additional 5 MGD of water to KAWC's needs with additional piping connecting the Frankfort Plant Board to the KAWC system. (*See* Rebuttal Test. of G. Heitzman at 5:38-41.) Therefore, by July of 2010, KAWC will have access to a water supply of 10 MGD.

(Supp. Test. of G. Heitzman at 4:12-18, as modified at March 2008 Hearing Transcript, LWC Exhibit 1 at 4:15-18.)

Ms. Bridwell concedes that much of the design work necessary for KAWC to avail itself of this solution is already complete. (*See* Test. of L. Bridwell, March 2008 Hearing Transcript at 32:2-12.) Moreover, she concedes that this interconnection between KAWC and Frankfort could result in the additional availability of even 5 to 6 MGD of treated water to KAWC. (*See id.* at 31:13-20.) This interconnection, it bears noting, would be facilitated by the fact that KAWC's proposed Pool 3 pipeline is already designed and bid to cross the Frankfort Plant Board's existing facilities. (*See* Proposed Route Map, attached as Exhibit D to KAWC's Application.) Again, however, KAWC has provided no "substantial evidence" that it has thoroughly evaluated this alternative interim measure in light of the additional water supply LWC proposes to make available for Frankfort (and, thereby, KAWC). Like the crestgates solution and the Versailles solution, KAWC has ignored this possibility to singularly focus on its Pool 3 proposal.

The same holds true for KAWC's evaluation of reducing its unaccounted-for water. Ms. Bridwell testified that "[u]naccounted-for water continues to be a challenge [for KAWC] ... with a 14.9% level in 2006." (Rebuttal Test. of L. Bridwell at 9:21-22.) Attorney General witness Mr. Rubin testified that while unaccounted-for water cannot be completely eliminated, "utilities have been successful in controlling it to levels below 10%." (Rebuttal Test. of S. Rubin at 12:15-16.) A similar reduction in KAWC's unaccounted-for water could save at least an

additional 3 MGD of water for the benefit of KAWC's ratepayers. (*See* Test. of L. Bridwell, November 2007 Hearing Transcript, v.2 at 279:7-15 (stating that a reduction of KAWC's unaccounted-for water from 15 percent to even 11 percent would reduce KAWC's 2010 maximum day demand by approximately 3 MGD).) KAWC has not considered improving its unaccounted-for water because this measure, alone, would not satisfy KAWC's projected water supply needs. Still, KAWC has provided no evidence whatsoever (certainly not "substantial evidence") that this alternative solution - when coupled with other alternative solutions - could contribute to a more reasonable solution to its water supply deficit.

To the same end, there is no "substantial evidence" that KAWC considered conservation measures (for example, odd-even watering restrictions or conservation pricing) as a means of reducing the "total reasonable requirements of its customers under maximum consumption." (*See* Case No. 93-434, Order of September 29, 197 at 1.) The O'Brien & Gere report indicates that KAWC could save as much as 15% of its total demand by instituting appropriate conservation measures. (O'Brien & Gere Report at 10, Section 2.11, para. 3.) Though this alternative alone may be insufficient to address KAWC's total water supply deficit, it could still be a contributing factor in a comprehensive solution. (*See* Test. of L. Bridwell, November 2007 Hearing Transcript, v.1 at 142:11-24 (explaining that in the event a "dust bowl" drought of record recurs, KAWC merely plans to impose "probably voluntary and perhaps even mandatory odd/even restrictions" on outdoor water use.) This is hardly "substantial evidence" that KAWC has considered implementing conservation measures in conjunction with other measures to reduce its demand.

Throughout this proceeding, KAWC's tactic has been to exclusively focus upon its Pool 3 proposal. It has tried to shift its burden onto the parties by forcing them to explain why various

alternative solutions are better than the Pool 3 proposal. This, however, is legal sleight-of-hand, as KAWC bears the burden of proving – among other things – that it performed a meaningful, “thorough review of all reasonable alternatives.” (Case No. 2005-00142, Order of September 8, 2005 at 6.)

The evidence further shows that KAWC had not thoroughly evaluated the 25 MGD Louisville Pipeline proposal as of the November 2007 hearing. (*See* Direct Test. of L. Bridwell at 25:27-28 (admitting that Gannett-Fleming Engineers was engaged only to perform “an independent review of the previous studies and recommended solutions”).) It certainly has not considered LWC's \$35.1 million investment to Shelbyville, nor has it done so since the Franklin and Shelby County water providers decided to partner with LWC. (*See* Test. of L. Bridwell, March 2008 Hearing Transcript, v.2 at 80:1-8.) In fact, it has not directly done so since 1999. (*See* Test. of L. Bridwell, November 2007 Hearing Transcript, v.2 at 218:5-6.)

KAWC's failure to thoroughly evaluate all reasonable alternatives is inexcusable. KAWC has not meaningfully evaluated the 5 MGD supply available from Versailles. It has not meaningfully evaluated the 5 MGD supply available from Frankfort. It has not meaningfully evaluated the 10 MGD supply available from the 900 million gallon supply increase available upon the installation of crestgates on Dam 9 of the Kentucky River. It has not evaluated the 3 MGD available by reducing its unaccounted-for water. It has not evaluated the 10 MGD available through the implementation of reasonable conservation measures. It has not meaningfully evaluated the Louisville Pipeline. And, there may be still other alternatives yet to be discovered. In total, this represents approximately 58 MGD of potential water supply that KAWC has effectively ignored. It ignored these alternatives despite the fact that the Pool 3 plant will be operated only “one or two or three days during a year” to address KAWC's peak water

demands⁸ (Test. of L. Bridwell, November 2007 Hearing Transcript, v.2 at 53:3-4.) The law and KAWC's ratepayers demand better. Accordingly, the Commission should deny KAWC's application.

D. KAWC's Pool 3 Proposal Is Not Reasonable.

In addition to proving that its Pool 3 proposal does not constitute wasteful investment or duplication of facilities, KAWC must also provide substantial evidence that the Pool 3 proposal is reasonable. No such evidence exists. First, the Pool 3 proposal is unreasonably expensive in light of the alternative solutions available. Second, the proposed route for the Pool 3 pipeline is unreasonable. Third, Pool 3 of the Kentucky River does not provide a reasonable source of additional supply. Thus, the Commission should deny KAWC's application.

1. The Pool 3 Proposal is Too Expensive in Comparison to the Louisville Pipeline.

The Pool 3 proposal is significantly more expensive than the Louisville Pipeline. First, it has a significantly higher capital cost. Second, it has a significantly higher net present value cost. Third, it has a significantly higher long-term cost as a result of the inevitable Ohio River "back-up." (See Direct Test. of L. Bridwell at 30:20-23.) Therefore, the Commission should deny KAWC's application.

The Pool 3 proposal has a significantly higher capital cost than the Louisville Pipeline. The R. W. Beck Report calculates the KAWC's Pool 3 proposal capital cost at approximately

⁸ Even then, KAWC's Pool 3 withdrawal permit raises significant questions regarding whether the proposed Pool 3 plant will even be available during those "one or two or three days" that it could be needed. Pursuant to that permit, seventy percent (14 MGD) of the proposed 20 MGD water treatment capacity will sit unused seventy-five percent (9 months) of the year. These months include the months of September and October, which KAWC's president, Mr. Rowe, indicated were part of the drought of 2007. (See Test. of N. Rowe, November 2007 Hearing Transcript, v. 1 at 63:6-9.) USGS data for 2007 indicates that the September 2007 flow levels on the Kentucky River were among the lowest in thirty years.

\$170,000,000. (See "Final Report: Comparison of the Louisville Pipeline and Pool 3 Options to Serve Central Kentucky Water Customers," September 2007 Revised November 2007 at Table 3-2 and 3-3 (hereinafter "November 2007 R. W. Beck Report").) It calculates the Louisville Pipeline alternative's capital cost at approximately \$113,000,000. (*Id.* at Table 3-1.) Each of these estimates are based upon KAWC's own assumption (borne out in KAWC's bid results) that the capital cost of constructing a 42" transmission main will cost approximately \$300 per linear foot. (See November 2007 R. W. Beck Report, Appendix A-2 at n 1.)

R. W. Beck further explains that "[g]iven the lower cost of a 36-inch pipe, the total project cost could be as much as 20% less than the 42-inch option modeled based on lower construction costs and if lower contingencies and engineering cost assumptions are used." (November 2007 R. W. Beck Report at 5-1.) In this light, KAWC witness Mr. Walker's estimate that the Louisville Pipeline (a proposed 36" facility) will cost approximately \$380-390 per linear foot, (*see* Test. of H. Walker, March 2008 Hearing Transcript, v.2 at 186:8-10), is fantasy. There is simply no arguing with the fact that it is less expensive to build a pipeline than it is to build a pipeline and a water treatment plant. (See Rebuttal Test. of G. Heitzman at 11:6-8.)

The Louisville Pipeline also holds a distinct advantage over the Pool 3 proposal with respect to net present value. As Mr. Rubin indicates, the "big difference [between the Pool 3 proposal and Louisville Pipeline alternative] is trading off up-front capital costs against what LWC would charge to purchase water." (Test. of S. Rubin, November 2007 Hearing Transcript, v.2 at 252:20-22.) LWC's expert Dr. Wetzel agrees in concept, testifying that "[E]conomies of scale for a treatment plant improve (compared to a wholesale purchase arrangement) as more water is needed." (Rebuttal Test. of E. Wetzel at 7:9-10.) Yet, there is no factual basis to assume, as Mr. Rubin does, that demand will grow by approximately more than twice the annual

growth rate that KAWC projects through 2030. (See Direct Test. of L. Bridwell, Table 1 (projecting annual demand growth of approximately .5 MGD).) R. W. Beck assumed a .5 MGD annual demand growth because it is supported by KAWC's own testimony, and it is a conservative estimate of the actual demand growth experienced since 1990. (See LWC Resp. to Post-Hearing Data Request No. 8.) Upon such reasonable assumptions, even the AG's witness agrees that the Pool 3 proposal is "more expensive on a net present value basis than the LWC pipeline option." (Rebuttal Test. of S. Rubin at 9:3.)

In a similar vein, there is no reason to assume that, starting in 2010, KAWC must purchase 10 MGD from the Louisville Pipeline every single day through 2030. KAWC claims this is necessary in order to ensure access to 20 MGD by 2030, (see Rebuttal Test. of L. Bridwell at 3:2-4), despite its 10 MGD projected deficit in 2010. (See Direct Test. of L. Bridwell at Table 2.) Of course, this alleged concern overlooks LWC's commitment to "maintain an available production capacity that is 15 percent above the maximum daily system demand..." (Rebuttal Test. of G. Heitzman at 6:39-40.) It also overlooks LWC's provision for allowing purchases larger than KAWC's reserved pipeline capacity. (See *id.* at 6:12-29.) Moreover by unnecessarily inflating the amount of water purchased, KAWC fully understood that it was unnecessarily inflating the present worth cost of the Louisville Pipeline.⁹

⁹ In essence, KAWC is using the same approach as Mr. Rubin, albeit by changing a different variable. Mr. Rubin targeted the .5 MGD annual growth assumption and – despite no rational basis for doing so – inflated it to a point where the Louisville Pipeline would be more expensive than the Pool 3 proposal. Likewise, KAWC targeted the 6 MGD purchase assumption and – despite no rational basis for doing so – inflated it to a point where the Louisville Pipeline would be more expensive than the Pool 3 proposal. No one contests that, by modifying the assumptions used in the R. W. Beck report, the present worth cost estimates of the Louisville Pipeline will correspondingly change. What is contestable, however, is Mr. Rubin's and KAWC's use of unreasonable assumptions to produce knowingly skewed results. There is simply no reason to assume growth greater than 0.5 MGD per year; likewise, there is simply no reason to assume that KAWC would actually purchase 10 MGD through the Louisville Pipeline from "Day 1" in light

KAWC has not even undertaken any “analysis to determine whether a lower amount [of water purchased through the Louisville Pipeline] would give it a substantial assurance that it would be able to meet its expected demand without having to reserve . . . 10 million gallons[.]” (See Test. of M. Miller, March 2008 Hearing Transcript, v.2 at 160:8-17.) Clearly, LWC's Louisville Pipeline proposal provides substantial assurances that (even at a 6 MGD initial purchase level) KAWC will be able to meet its expected demands. Under a reasonable “apples to apples” assumption that KAWC will initially purchase 6 MGD from LWC, the Louisville Pipeline has a present worth cost advantage of more than \$100 million over a twenty year timeframe. (Supplemental R. W. Beck Report at Figure 5-1.) Therefore, the Pool 3 proposal is unreasonably expensive.

When considering the financial impact of eventual Ohio River access, the advantage swings further in favor of LWC in the form of “a present worth cost advantage of approximately . . . 40 percent” over KAWC's Pool 3 proposal. (Test. of E. Wetzel, November 2007 Hearing Transcript, v.3 at 329:6-8; *see also generally* November 2007 R. W. Beck Report at Section 4.) Ms. Bridwell testified about KAWC’s “Ohio River back-up.” (See Direct Test. of L. Bridwell at 30:20-23.) Mr. Svinland did the same. (See Direct Test. of R. Svinland at A.21.) Ohio River back-up was a central component of the O’Brien & Gere Report’s recommended solution. (See O'Brien & Gere Report at 22.) Thus, the Commission should heed what Ms. Bridwell herself described as the “significant cost” of the “Ohio River back-up” to the Pool 3 plant. When factored into the analysis, the Louisville Pipeline holds a monumental cost advantage over the Pool 3 proposal, as well as immediate access to the Ohio River.

of the pipeline and treatment capacity commitments and excess purchase adjustment mechanisms identified in Mr. Heitzman’s October 1, 2007 rebuttal testimony.

KAWC has rigidly declined to proactively or productively discuss its concerns about the Louisville Pipeline proposal with LWC. LWC has put forth its best efforts to address KAWC's concerns, despite having learned of KAWC's objections to the Louisville Pipeline only at the hearings or through documents filed with the Commission,. For this reason, both KAWC and LWC could have benefited from discussions outside this formal process. KAWC's utter disinterest in meaningfully evaluating the Louisville Pipeline proposal is a failure to consider other reasonable alternatives, and therefore, KAWC's application should be denied.

2. The Route of the Proposed Pool 3 Pipeline Is Unreasonable.

In addition to being significantly more expensive than the Louisville Pipeline, the Pool 3 proposal's pipeline route is unreasonable. KAWC was (throughout the 1990's) a strong proponent of the Bluegrass Water Project pipeline to purchase treated Ohio River water from Louisville. That project had encountered significant and "extremely vocal" public opposition to a route through some of the Commonwealth's most beautiful horsefarms and landscapes in Woodford County. (Direct Test. of L. Bridwell at 12:9-10.) That public opposition played a strong role in delaying and ultimately defeating the Bluegrass Water Project.

KAWC now comes to the Commission with yet another plan opposed by a significant, *extremely vocal group of individuals*. Curiously, despite its intimate history with the disruptive effects of public opposition, KAWC has inexplicably made no projection of the potential delays associated with easement acquisition. (Test. of L. Bridwell, *Hearing Transcript*, v. 2 at 42:21-24.) This failure is all the more glaring in light of KAWC's admission that it has not yet obtained approximately ninety percent (90%) of the easements required by its pipeline route. (See KAWC Response to Post-Hearing Data Request No. 1.)

Presumably, KAWC's refusal to consider the Louisville Pipeline's interstate corridor alternative stems from prior opposition to the Bluegrass Water Project. Oddly, the Bluegrass Water Project was not the same route, but involved a more southerly route than the one espoused by the present Louisville Pipeline proposal. The Bluegrass Water Project route bisected some of the Commonwealth's most scenic horsefarms and countryside in Woodford County. The Bluegrass Water Project did not involve a regional solution. In addition, no public comment or evidence in the record supports KAWC's apparent assumption that public opposition from the late 1990's is still existent. In fact, there is no known opposition to the Louisville Pipeline's proposed route north of I-64. KAWC's refusal to pursue projects involving this uncontested route of the Louisville Pipeline defies reason, especially in light of the substantial vocal opposition to its own proposal. Consequently, the Commission should deny KAWC's application.

3. The Pool 3 Proposal Is Not Feasible, Nor Is It a Reasonable Source of Supply.

The Pool 3 proposal is neither feasible nor a reasonable source of supply. KAWC's withdrawal permit from the Division of Water limits it to withdrawing up to 6 MGD from Pool 3 during nine months of the year (from September through May). Thus, in the event KAWC needed (for example) 15 MGD one hot September day, the expensive new water treatment plant would still leave KAWC with a 9 MGD supply deficit. As Mr. Heitzman explained, "There must... always be consideration of whether there will be sufficient treatable water in the proposed source, as plant capacity is meaningless in the absence of sufficient source water capacity." (*See id.* at 11:23-25.)

Yet, there is no evidence that the Division of Water or any other third-party has performed a safe-yield analysis of Pool 3 to determine if there is additional water beyond these

permitted amounts. (*See* KAWC Resp. to PSC Staff Init. Data Request No. 2 ("KAWC is not aware of any calculation of a safe yield for pool 3 of the Kentucky River").)¹⁰ KAWC has subsequently attempted to disclaim this answer by touting Gannett-Fleming's review of flow data for Lock/Dam 2 and Lock/Dam 4 of the Kentucky River. As an initial matter, Gannett-Fleming's review does not concentrate on Pool 3, where KAWC proposes to site its water treatment plant. (*See* Test. of R. Svinland, November 2007 Hearing Transcript, v.2 at 337:15-16 ("What I have looked at is the USGS website [that] publishes daily flow information.") Notably KAWC has provided no evidence that this "study" of Pool 3 reflects any evaluation of: (i) public safety issues associated with potentially destabilizing dams through excessively lowering the surface level of Pool 3; (ii) aquatic life issues associated with withdrawals from Pool 3; (iii) agricultural issues associated with permissible farming uses of Pool 3 water; and (iv) recreational impact caused by lowering the water available in Pool 3.

The Ohio River, of course, does not suffer from such supply limitations, and this likely explains why KAWC's investigation of the Pool 3 water treatment plant also considered access to the Ohio River "back-up" that Ms. Bridwell referred to (and R. W. Beck quantified) as a "significant expense." Ultimately, the Commission should require a safe yield analysis of Pool 3 prior to approving the \$160 million project KAWC has proposed.

Not only does the Louisville Pipeline's existing Ohio River access avoid any questions regarding source of supply, the Louisville Pipeline "could actually pump more water (that is up to an additional fifty percent of the capacity of LWC's proposed 36" transmission main) to Central Kentucky than KAWC's Pool 3 alternative would allow." (*See* Rebuttal Test. of G. Heitzman at 10:14-15.) On a limited, emergency basis, the Louisville Pipeline "allow[s] more

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flexibility than the fixed ceiling of the KAWC Pool 3 alternative and the limits of the Pool 3 water supply.” (*Id.* at 10:18-19.) Similarly, the Louisville Pipeline would also provide KAWC and Central Kentucky (including the Franklin and Shelby County water providers, and perhaps others) with significant public safety and health benefits by providing a redundant source of supply, creating “a significant advantage in the event of natural or manmade disaster on the Kentucky River.” (*Id.* at 11:13-14.) Quite simply, there is no “substantial evidence” that the Pool 3 proposal is either feasible or reasonable from a source of supply perspective. Therefore, the Commission should deny KAWC’s application.

IV. Conclusion.

The Commission should not grant KAWC's application for a CPCN to commence with construction of the Pool 3 proposal. KAWC has not presented substantial evidence that its application meets any part of the applicable legal standard. While LWC does not contest the need for a comprehensive solution to Central Kentucky’s water supply deficit, KAWC completely overstates the urgency of that need in an apparent effort to avoid evaluation of all reasonable alternatives. KAWC failed to show that the Pool 3 proposal will avoid wasteful investment and duplication of facilities. To the contrary, the Pool 3 proposal will actually encourage wasteful investment and duplication of facilities, as it ignores LWC’s existing water treatment plants and existing water treatment plant capacity, among other things. Finally, the Pool 3 proposal is simply not reasonable from a cost, route, and source of supply perspective.

The Louisville Pipeline better serves KAWC’s ratepayers and Central Kentucky in almost every way imaginable. The Louisville Pipeline provides a redundant, two-river solution to supply issues. The Louisville Pipeline is substantially more cost-effective, especially in light of the significant additional costs associated with KAWC’s considerations of an “Ohio River

back-up.” The Louisville Pipeline draws upon LWC’s existing treatment capacity and abundant water to address KAWC’s source of supply deficit during all twelve months of the year. The Louisville Pipeline embraces a broader concept of regionalization than does the Pool 3 proposal. The Louisville Pipeline would occupy the already encumbered I-64 corridor rather than the pristine, historical land that KAWC proposes to scar. Moreover, LWC’s existing water rates are substantially lower than KAWC’s rates, and LWC has historically bested KAWC in controlling its rates. The Louisville Pipeline is a more efficient, scaleable solution to the peak/drought concerns KAWC seeks to address. Finally, LWC’s access to the Ohio River provides a substantially more certain supply than access to a Pool 3 for which there has been no safe-yield analysis. KAWC is headed to the Ohio River eventually; it might as well benefit its ratepayers by doing so now through the Louisville Pipeline.

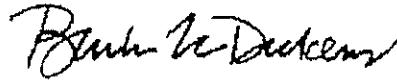
Likewise, if KAWC's interest in providing a broad regional solution is truly genuine, it should support the Louisville Pipeline as a component of a comprehensive regional solution to Central Kentucky's water supply deficit. This is a rare and unique opportunity to connect the Commonwealth's two largest population centers with a backbone of a water infrastructure grid that will not only bring lower costs, but also a more reliable, "two-river solution" supply to Lexington, Franklin and Shelby County water providers, as well as members of the BWSC.

For all of the foregoing reasons, the Pool 3 proposal does not serve the public convenience and necessity. Therefore, the Commission should take the following actions:

1. Reject KAWC's application for a CPCN; and
2. Order KAWC to meaningfully and thoroughly investigate all reasonable

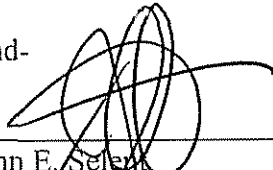
alternatives identified in this brief in order to implement a comprehensive solution that serves the public convenience and necessity in solving Central Kentucky's water supply deficit.

Respectfully submitted,



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APPENDIX "E"

APPENDIX E

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?

At the outset, LWC notes that this question is somewhat of a "red herring" insofar as the Louisville Pipeline proposal does not necessarily entail LWC making wholesale water sales beyond Shelby County where its ownership of the proposed pipeline would end. Nevertheless, LWC responds that, yes, it has the legal authority to make wholesale water sales in the counties other than Jefferson County and those counties that are contiguous to Jefferson County. KRS 96.265 authorizes the Board of Waterworks (the governing body of LWC) to "extend the waterwork corporation's facilities to provide water service to persons within and outside the city of the first class, **including** extensions into counties adjoining its county of origin." *Id.* (emphasis added).

KRS 446.080 further provides as follows:

(1) All statutes of this state shall be liberally construed with a view to promote their objects and carry out the intent of the legislature, and the rule that statutes in derogation of the common law are to be strictly construed shall not apply to the statutes of this state. . .

(4) All words and phrases shall be construed according to the common and approved usage of language, but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed according to such meaning.

Id.

The plain language of the KRS 96.265 language providing that LWC can extend its facilities to provide water service "to persons within and outside the city of the first class, including extensions into counties adjoining [Jefferson County]" does not limit LWC's permissible actions. See *Black's Law Dictionary*, 7th ed. (defining "include" as meaning "[t]o contain as a part of something" and providing that "[t]he participle *including* typically indicates a partial list...") (emphasis in original). It merely specifies that contiguous counties are included within the scope of the legislature's grant of power. This conclusion is underscored by the legislature's omission of the word "including" with respect to the rights of cities to "extend [its water system] into, and furnish and sell water... within, any territory contiguous to the city..." (KRS 96.150.) There is no basis for ignoring this significant difference in the general rights of cities and the rights of waterworks owned by cities of the first-class.

Therefore, LWC has the legal authority to make wholesale water sales in 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?

Again, LWC notes at the outset that this question is somewhat of a "red herring" insofar as the Louisville Pipeline proposal does not necessarily entail LWC constructing, owning, and operating a water transmission main beyond Shelby County where its ownership of the proposed pipeline would end. Nevertheless, LWC responds that, yes, for all the reasons set forth in response to question 1, above, LWC has the statutory authority to construct, own, and operate a water transmission main in counties other than Jefferson County and those counties 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 a joint public-private venture to supply water to Kentucky-American and any other regional water suppliers?

This is a complex question that LWC has not previously considered. From LWC's perspective, the question has always been whether it would not be more financially beneficial for Central Kentucky if LFUCG, LWC, and other public entities such as the BWSC, the KRA, and/or Kentucky Infrastructure Authority coordinated on a venture to supply water to KAWC. Not only does this approach have the potential benefit of tax-exempt financing, it also avoids complications with respect to the Kentucky Constitution's prohibition against political subdivisions lending their credit to private entities. (See Kentucky Constitution § 179.)

It is unclear why KAWC has not investigated whether (for example) the LFUCG, LWC, the BWSC, the KRA, and/or the Kentucky Infrastructure Authority could supply water to KAWC at rates far below those that KAWC would charge to recoup the greater expense of its Pool 3 proposal. As far as public-private ventures are concerned, Section 179 of the Kentucky Constitution forbids a political subdivision of the Commonwealth from lending its credit "to any corporation, association or individual, except for the purpose of constructing or maintaining bridges, turnpike roads, or gravel roads [or for purposes associated with the location/construction of a Capitol]." *Id.* While that prohibition needs to be analyzed in the context of a specific factual scenario, almost any joint venture or partnership implicates financial resources or credit of both parties. Notwithstanding its "agreement to agree" with KAWC, the BWSC (as an incorporated district of the Commonwealth) would appear to face the same complications. These complications are particularly difficult to address in the absence of specific factual scenarios.

Nevertheless, LWC conceives of at least one scenario pursuant to which LFUCG could potentially enter into a public-private venture with KAWC to address the water supply deficit.

Specifically, it is conceivable that LFUCG, pursuant to its statutory authority¹¹ to operate waterworks, could independently (or as a member of the BWSC) own a sufficient portion of the proposed Pool 3 facilities to supply (on an as-needed basis) that incremental portion of the peak or drought demand that KAWC is not able to supply. This approach, with its separation of ownership, would appear to place LFUCG outside the reach of the Kentucky Constitution's § 179 prohibition. *See Miller v. City of Owensboro*, Ky., 343 S.W.2d 398, 402 (1961) (recognizing that "the rule is well established that the issuance of revenue bonds to finance a public project, even such projects as an industrial building to be rented to private industry, does not constitute a lending of credit in violation of the Constitution") (citations omitted). Admittedly, this scenario results in KAWC having ownership of a smaller portion of its proposed 20 MGD water treatment plant and related facilities. But, this fact would not be fatal to KAWC's regulatory obligation to meet the demand of its customers because that demand from its customers situated within LFUCG would be correspondingly reduced by the amount that LFUCG (as partial owner) could then supply. (In essence, then, KAWC would only need to own as much incremental capacity as would be required by its customers outside of LFUCG.) This, in turn, would reduce the percentage of private investment required for the Pool 3 proposal, create a corresponding decrease in the present worth cost of the Pool 3 proposal, and thereby reduce the rate impact to KAWC's customers.

Again, LWC emphasizes that these are the sort of investigations and discussions that KAWC should have undertaken long before filing its application. As LWC has stated throughout this proceeding, there are significant financial and other advantages to increased public ownership of a regional solution to the Central Kentucky water supply deficit. LWC is happy to lend its expertise in furtherance of exploring these advantages in a cooperative manner.

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?

Although Kentucky law is somewhat unclear on this issue, it appears most likely that the Commission may not condition a CPCN by limiting the amount that KAWC 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. KRS 278.020 provides strictly that the Commission "may issue or refuse to issue [a CPCN], or issue it in part and refuse it in part." *Id.* Research of Kentucky caselaw and prior Commission decisions does not show any precedent of the Commission conditioning the

¹¹ LFUCG's statutory authority to provide water to its inhabitants is based upon a combined reading of KRS 67A.060(1) (giving LFUCG the powers of second-class cities), KRS 96.160 (giving second-class cities the power to furnish water), and LFUCG Charter, Article 3, Section 3.02 (authorizing LFUCG to furnish water to its inhabitants). *See also Comm. v. City of Covington*, Ky., 107 S.W.231 (1908) ("The city [of the second class] is authorized to acquire and own waterworks plants.")

grant of a CPCN upon the applicant only being able to include estimated expenses in a future rate case.

Upon KAWC's filing of a future rate case, the Commission could clearly address the issue of whether it is appropriate for KAWC to include potential expense overruns in the context of its rate application. (*See* KRS 278.190(1) (granting the Commission the power to "hold a hearing concerning the reasonableness of ... new rates").) Prior to that time, however, such a determination would appear to be unconstitutionally arbitrary as it could not possibly rest upon substantial evidence of whether an, as of yet, unknown rate base or proposed rate is "just and reasonable" within the meaning of KRS 278.180 and 278.190.

ATTACHMENT "1"

ATTACHMENT 1

II. Statement of the Facts.

A. Procedural History.

This case traces its roots back to the Commission's November 19, 1993 order for "an investigation into the source of supply and future demand, including demand side management, of [KAWC]." (Case No. 94-434, Order of November 19, 1993 at 1. During the course of that proceeding, KAWC presented two witnesses (Robert Gallo and Gary Naumick) who discussed "the proposed [Louisville] pipeline and characterize[d] it as a feasible solution to [KAWC's] supply deficiency." *Id.*, Order of March 25, 1994 at 2.

That case (Case No. 93-434) highlighted the Kentucky River's supply problems: "All of the evidence in this case supports the conclusion that the Kentucky River cannot supply enough water to meet the unrestricted demands of [KAWC]'s customers during drought conditions." *Id.*, Order of August 21, 1997 at 2-3. The Commission then found "that a water supply deficit would exist during an extreme drought situation." *Id.* at 5. It ordered "that [KAWC] shall 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." *Id.*

Apparently displeased with the Commission's order, the Attorney General moved for rehearing with respect to the Commission's finding that KAWC is required to meet its customers' unrestricted demand during drought conditions. The Commission responded that KAWC's "inability to meet unrestricted demand is contrary to Commission regulation 807 KAR 5:066, Section 10(4), which states, 'The quantity of water delivered to the utility's distribution system from all source facilities shall be sufficient to supply adequately, dependably and safely the total reasonable requirements of its customers under maximum consumption.'" *Id.*, Order of September 29, 1997 at 1 (emphasis added). "The regulation includes no exception for drought conditions." *Id.* at 6.

The Commission continued, "Thus, for planning purposes a drought response plan is not a substitute for adequate sources of supply to meet customers' maximum consumption." *Id.* at 1. "While a utility may not at all times be in compliance with this regulation due to the utility's particular circumstances, for planning purposes a utility is obligated to make every effort and take all steps necessary to be in compliance." *Id.* at 6.

By the following November (1998), KAWC and LWC had negotiated and executed a water supply agreement. (See November 2007 Hearing Transcript, LWC Exhibit 5.) Pursuant to that agreement, the parties would construct a pipeline between Louisville and Lexington, giving KAWC access to treated water from the reliably abundant supply of the Ohio River. (See *id.*)

After beginning the initial design and implementation work, however, KAWC encountered significant public resistance to pipeline's proposed route. (See Direct Test. of L.

Bridwell at 12:9-10.) Rather than follow the interstate corridor, the original pipeline to Louisville diverged from the I-64 corridor around Shelbyville and cut through private property, including horsefarms and scenic landscapes between Shelbyville and Lexington. (See “Bluegrass Water Project Update,” November 2007 Hearing Transcript, LWC Exhibit 2 at 1.) “[P]ublic discussion was becoming extremely contentious by the summer of 1999, when KAW announced that it would stop all work on the [Bluegrass Water Project]¹² to cooperate with the LFUCG Council in its analysis[.]” of alternative solutions. (Direct Test. of L. Bridwell at 13:19-21.)

Not coincidentally, the LFUCG Council subsequently passed a nonbinding resolution recommending that “future water supply for Lexington-Fayette County should come from the Kentucky River.” (*Id.*, Exhibit A at 3.) Despite the fact that KAWC “did not agree entirely” with the LFUCG resolution, it stopped work on its plans to secure access to the Ohio River through LWC. (*Id.* at 17:1-2.)

As a result of KAWC’s decision to solve its supply issue through the Kentucky River, the Commission instituted a new case in 2001 to investigate the feasibility and advisability of KAWC’s new plan. See *In the Matter of an Investigation into the Feasibility and Advisability of Kentucky-American Water Company’s Proposed Solution to Its Water Supply Deficit*, Kentucky Public Service Commission, Case No. 2001-00117 (hereinafter “Case No. 2001-00117”). In its May 15, 2001 order initiating this new case, the Commission recounted that “[t]hroughout the course of [Case 93-434], [KAWC] advised the Commission of its intent to augment its water supply by purchasing water from the Louisville Water Company and constructing a pipeline to transport this water to its area of operations.” *Id.* at 1. “In late 1999 and early 2000, in light of resolutions of the [LFUCG] Council that urged a Kentucky River solution to its supply concerns, however, [KAWC] reconsidered its plans and instead chose to focus exclusively on the Kentucky River as its sole source of supply.” *Id.* at 1-2.

Despite KAWC’s reconsideration, it identified problems related to “several questions as to the feasibility and adequacy of the Kentucky River solution.” *Id.* at 2. Most notably, KAWC explained that “a Kentucky River solution is contingent upon a series of decisions of several different governmental and private entities and their subsequent implementation.” *Id.* KAWC also explained that it could not “unilaterally implement a project to increase the supply of the Kentucky River.” *Id.* (citing KAWC’s March 19, 2001 Report to the Public Service Commission: Efforts to Ensure Adequate Sources of Supply to Meet Customer Demand Through 2020). Thus, KAWC recommended that it should “[p]ursue a purchase water contract with the Frankfort Electric and Water Plant Board for a supplemental supply[.]” on an interim basis while further investigation of the Kentucky River was undertaken. (Direct Test. of L. Bridwell at 19:24-25.)

¹² The Bluegrass Water Project was the name for this original Louisville Pipeline solution. The Louisville Pipeline alternative follows the I-64 corridor, thereby eliminating those original route concerns that fomented public opposition to the Bluegrass Water Project.

Several government agencies and water utilities, including KAWC, subsequently formed the Bluegrass Water Supply Consortium (“BWS Consortium”) to review and address potential solutions to the water supply deficit. On February 27, 2004, the consultant to the BWS Consortium, O’Brien & Gere Engineers, Inc. (“O’Brien & Gere”), issued its final report (“O’Brien & Gere Report”).¹³ The O’Brien & Gere Report identified three superior alternatives for addressing the source of supply issue: (i) the purchase of treated Ohio River water from LWC; (ii) Ohio River water withdrawal and a new water treatment plant at Maysville/Dover or Warsaw; and (iii) a new water treatment plant on Pool 3 of the Kentucky River with supplemental raw water from the Ohio River. (O’Brien & Gere Report at 3.)

Each of these alternatives contained the common thread of access to the Ohio River. *Id.* In fact, this Ohio River access was the essential component of the water supply deficit solution for the following reason:

The Pool 3 alternative was therefore modified to include supplemental flow from the Ohio River to offset any shortfalls associated with permitted withdrawals from the Kentucky River. The Ohio River pipeline would likely be designed to carry about 25 to 30 mgd of raw water. The ability to withdraw water from both the Kentucky River and the Ohio River provides significant flexibility and reliability to the region.

Id. at 22.

Of these alternatives, the least cost solution “was a pipeline to LWC.” (Direct Test. of L. Bridwell at 22:1-2.) Despite the pipeline to Louisville being the least cost solution, the O’Brien & Gere Report determined that “the negative public perception about the [Bluegrass Water Project] caused its overall weighted score to be less than the recommended solution.” (*Id.* at 22:3-5.) That recommended solution was a new water treatment plant on Pool 3 of the Kentucky River with supplemental raw water from the Ohio River. (*Id.*) The BWS Consortium then disbanded, and the Bluegrass Water Supply Commission (“BWSC”) was formed. (See Direct Test. of L. Bridwell at 22-23.) The BWSC set about implementing the Pool 3/Ohio River project recommended by the O’Brien & Gere Report. (See *id.* at 22-24.)

Similar to KAWC’s report to the Commission in March of 2001, “[o]ver the course of 2005, the BWSC ... determined that a Phase I project to connect Frankfort and Lexington was the first priority....”¹⁴ (*Id.* at 24:27-28.) The BWSC learned in September of 2005 that Frankfort had only 2.2 MGD of available treatment capacity. (See *id.* at 25:1-4.)

¹³ Because the O’Brien & Gere Report was already designated a part of the record of this case, it does not have an exhibit number.

¹⁴ KAWC has not explained why it did not explore this “first priority” between 2001, when it initially identified this priority, and 2005.

Then, in March of 2006, the Commission summoned KAWC to an informal conference. (*Id.* at 25:22-23.) “[R]egulatory and customer concerns were emphasized to [KAWC].” (*Id.*) Having taken still no definitive action on this matter for now well over a decade, KAWC “committed at that conference that it would bring a plan back to the PSC by the Spring [of] 2007....” (*Id.* at 25:23-24.)

Two months later, KAWC was “proposing the wholesale water delivery from the new plant to the BWSC.” (*Id.* at 26:8-9.) BWSC balked, however, as it wanted equity ownership of any water supply solution. (*Id.* at 26:9-13.) Then, in September of 2006, KAWC proposed the potential for joint ownership of the Pool 3 proposal. (*Id.* at 26:9-13.) In March of 2007, KAWC filed its application for a CPCN to implement its Pool 3 proposal.

Just days prior to the initial formal hearing in this matter, KAWC and the BWSC signed an “agreement to agree” that provides BWSC until April 1, 2008 to elect potential minority ownership in the Pool 3 proposal. (*See* November 2007 Hearing Transcript, LWC Exhibit 6.) Section 19 of that agreement clarifies that if the BWSC makes such an election by that date, KAWC and the BWSC will then “negotiate and enter into any and all subsequent written agreements that may become necessary to accomplish the purposes of the election made.” (*Id.*) Less than two weeks from the deadline, there is still no evidence that BWSC has elected any option under the “agreement to agree.” There is no evidence that BWSC has the financial wherewithal to do so in any event.

B. KAWC’s Application.

1. The Water Treatment Plant.¹⁵

KAWC’s application seeks a CPCN to construct a 20 MGD water treatment plant on Pool 3 of the Kentucky River. (*See* Application.) The December 19, 2007 “Intermediate Bid Evaluations” supplied by KAWC indicate that the “construction only” cost of the proposed water treatment plant are likely to be \$64,000,000. (*See id.*) KAWC’s original estimated “construction only” cost for the proposed water treatment plant was \$55,259,100. (*See id.*) Thus, the proposed water treatment plant was ultimately 15.81% more expensive than KAWC had originally anticipated. Since the November 2007 hearing, the price of the proposed water treatment plant has risen by \$2,323,158. (*See* Test. of L. Bridwell, March 2008 Hearing Transcript, v.2 at 82:1-2.)

Most of the necessary permits for the water treatment plant have been obtained, including a

¹⁵ While KAWC’s application contemplates the possibility that the BWSC could purchase a twenty percent equity interest in the Pool 3 proposal, there has been no indication that BWSC is willing or able to do so. In any event, even if the BWSC desired to, and was financially able to, make an election under the “agreement to agree,” KAWC would still only have access to 20 MGD from the proposed treatment plant. Thus, this brief refers to the Pool 3 proposal as involving a 20 MGD water treatment plant, which is the treatment capacity KAWC proposes to create for itself.

Division of Water withdrawal permit authorizing withdrawals of 6 MGD during nine months of the year and 20 MGD during the remaining three months (June, July, and August). (See Application at Exhibit G.) There is no evidence that the Division of Water or any other third-party has performed a safe-yield analysis of Pool 3 to determine if there is additional water beyond these permitted amounts. (See KAWC Resp. to PSC Staff Init. Data Request No. 2 ("KAWC is not aware of any calculation of a safe yield for pool 3 of the Kentucky River").) This, despite the fact that the Commission has previously determined that "it [is] impossible to reach a definitive conclusion as to Kentucky-American's need to develop a supplemental source of supply until a conclusive safe-yield analysis of the Kentucky River is performed." *In the Matter of Application of Kentucky-American Water Company to Increase Its Rates*, Kentucky Public Service Commission, Case No. 97-00034, Order of September 30, 1997 at 12 (hereinafter "Case No. 97-00034"). Absent a conclusive safe-yield analysis of Pool 3, then, it is impossible to conclude that KAWC will have any supply other than what is indicated on its withdrawal permit from the Division of Water. Attorney General witness Mr. Rubin concurred by acknowledging that he did not know the safe yield of Pool 3, except insofar as KAWC possessed the withdrawal permit attached as Exhibit G to its application. (Test. of S. Rubin, November 2007 Hearing Transcript, v.2 at 243:14-16.)

KAWC further testified that it has not conducted any geotechnical studies of Dam 3. (Test. of L. Bridwell, November 2007 Hearing Transcript, v. 2 at 95:6-12.) Similarly, it did not review any geotechnical studies of Dam 3 prior to deciding to locate its proposed water treatment plant at Pool 3. (*Id.*) Exhibit A to Ms. Bridwell's rebuttal testimony, however, indicates the KRA's belief that Dam 3 is "well past [its] design life..." (*Id.* at 2 of 4.) That exhibit also indicates that "[t]o support [the Pool 3 proposal] and assure that a raw water supply is available for the plant, the outdated Dam 3 needs to be replaced." (*Id.* at 2 of 4.) At the March 2008 hearing in this matter, the KRA introduced evidence supporting these conclusions.

Thus, KAWC first asks the Commission to assume that the KRA will replace Dam 3 in a timely manner. Taking this assumption as true, then, KAWC effectively proposes to add the following water supply: (i) 6 MGD from January through May; (ii) 20 MGD from June through August; and (iii) 6 MGD again from September through December. That is, KAWC proposes to construct a 20 MGD water treatment plant even though it may only withdraw up to thirty percent (6 MGD) of that amount from Pool 3 during nine months of the year. Moreover, those nine months include September and October, which KAWC's president, Mr. Rowe, indicated were part of the drought of 2007.¹⁶ (See Test. of N. Rowe, November 2007 Hearing Transcript, v.1 at 63:6-9.)

The 6 MGD of available withdrawal during those months does not come close to satisfying KAWC's projections of a 20 MGD drought supply deficit in 2010, a 25 MGD drought supply deficit in 2020, or a 28 MGD drought supply deficit in 2030. (See Direct Test. of L. Bridwell at Table 2.) Even assuming, then, that KAWC will be able to withdraw the full 20 MGD during a

¹⁶ In light of KAWC's withdrawal permits for Pool 3, seventy percent (14 MGD) of the proposed 20 MGD water treatment capacity will sit useless seventy-five percent (9 months) of the year.

drought, the Pool 3 proposal still only addresses KAWC's drought supply deficit through 2010. (*See id.*) It does not address KAWC's supply deficit through 2020, as the Commission ordered many years ago. (*See id.* (indicating a 25 MGD drought supply deficit in 2020).) It also does not address KAWC's supply deficit through 2030, as KAWC claims. (*See id.* (indicating a 28 MGD supply deficit in 2030).)

Absent the recurrence of a once-in-130-years drought, KAWC indicates that it will only need the proposed plant "one or two or three days during a year" as a peaking plant. (Test. of L. Bridwell, November 2007 Hearing Transcript, v.2 at 53:3-4.) This is truly a plant that would be needed only on the rarest of occasions (less than one percent (1%) of the year).

2. The KAWC Pipeline.

KAWC's application also seeks permission to construct a 42-inch pipeline approximately thirty miles from the proposed Pool 3 water treatment plant to Lexington. (*See Proposed Route Map attached as Exhibit D to KAWC's Application.*) The December 19, 2007 "Intermediate Bid Evaluations" supplied by KAWC indicate that the "construction only" cost of the proposed pipeline and related facilities (booster pump station and storage tank) are likely to be \$57,529,787. (*See id.*) KAWC's original estimated "construction only" cost for the proposed pipeline and related facilities was \$67,374,861.90. (*See id.*) Thus, the pipeline and related facilities were ultimately 14.61% less expensive than KAWC had originally anticipated. Since the November 2007 hearing, the cost of KAWC's proposed pipeline and related facilities has risen by \$3,130,236 (\$3,049,356 + \$80,880). (*See Test. of L. Bridwell, March 2008 Hearing Transcript, v.2 at 82:2-6.*)

The KAWC pipeline will effectively connect its recently-acquired Owen County water systems with its Lexington-area water system. (*See November 2007 Hearing Transcript, LWC Exhibit 1.*) Upon completion, KAWC's water system would be situated just one county (Carroll or Gallatin) away from the Ohio River. (*See id.*)

Similar to the old Bluegrass Water Project,¹⁷ KAWC's proposed transmission main will cut straight through some of Central Kentucky's most scenic landscapes. (*See Proposed Route Map attached as Exhibit D to KAWC's Application.*) And as with the Bluegrass Water Project, the public opposition to KAWC's pipeline from Pool 3 to Lexington has been vocal, visible, and plentiful. (*See Public Comment Hearings and Public Comment Letters.*)

Incredibly, KAWC is "not sure" if challenges from the public could affect the speed with which its proposed pipeline could be built. (Test. of N. Rowe, November 2007 Hearing Transcript, v. 1 at 101:12-17.) It even admits that it has made no projection of the potential delays associated with easement acquisition. (Test. of L. Bridwell, November 2007 Hearing Transcript, v.2 at 42:21-24.) By KAWC's own admission, challenges from the public derailed the Bluegrass Water Project. (*See Direct Test. of L. Bridwell at 12-13.*) Consequently, there should be no reason to assume the absence of a similar challenge with respect to its Pool 3

¹⁷ KAWC had proposed a 36" pipeline (as opposed to its current 42" proposal) in connection with the Bluegrass Water Project.

pipeline.

In addition to the public opposition associated with the KAWC pipeline, the KAWC pipeline is also significantly larger than necessary. KAWC has proposed a 42" pipeline to transport the 20 MGD maximum permitted withdrawal and peak output of the proposed treatment plant. (See Application.) A 42" pipeline could transport 175% (35 MGD) of that volume without modification. (Test. of R. Svinland, November 2007 Hearing Transcript, v.2 at 300:3-6.) In theory, a 42" pipeline could even transport 200% (40 MGD) of the 20 MGD volume of water available to KAWC under its withdrawal permit. (*Id.* at 300:12-15.) The reason for this significant overbuild lies just to the northwest.

3. Supplemental Supply from the Ohio River.

KAWC seems unwilling to provide a straight answer with respect to its intentions to secure supplemental supply from the Ohio River. In a vacuum, access to the Ohio River is positive. The supply is abundant and reliable. As explained in section 4 of the November 2007 R. W. Beck Report, however, the cost of accessing the Ohio River from the proposed Pool 3 water treatment plant would be incrementally much higher than the cost of constructing a supplemental pipeline parallel to the proposed Louisville Pipeline. KAWC's ratepayers would bear the burden of that additional cost. For this reason, KAWC continually attempts to deflect attention from the fact that its Pool 3 proposal is but a "stepping stone" to the Ohio River.

This explains the apparent contradictions plaguing KAWC's testimony on the subject. For example, Ms. Bridwell's direct testimony from March of 2006 states that "[b]ecause of the significant expense of the Ohio River back-up, [KAWC] is proposing to defer that construction until the final construction... efforts on the Kentucky River are known..." (*Id.* at 30:20-23 (emphasis added).) Likewise, KAWC's route-selection expert, Mr. Svinland, testified that "[e]ach site selection was considered in terms of how Ohio River water could be supplemented to the site..." (Direct Test. of R. Svinland at A.21.)

Several months later, after LWC witness Dr. Wetzel filed his report quantifying the "significant expense"¹⁸ of that "Ohio River back-up," KAWC filed rebuttal testimony from Ms. Bridwell, who suddenly claimed to believe that "the Kentucky River alone is able to provide the water needs at the new treatment plant without the back-up to the Ohio River in the planning horizon." (Rebuttal Test. of L. Bridwell at 11:16-17.) Ms. Bridwell changed her position yet again during the hearing.

There, she testified that in the event of a drought, it is possible that KAWC would not be permitted to withdraw a sufficient amount of water from Pool 3 to satisfy its projected needs within the planning horizon.¹⁹ (Test. of L. Bridwell, November 2007 Hearing Transcript, v.2 at

¹⁸ This "significant expense" would add approximately \$171 million in capital costs, alone, to the Pool 3 proposal. (See November 2007 R. W. Beck Report at Section 4.1, Table 4-2.)

¹⁹ See also KAWC Response to Chetan Talwalkar Request For Information Number 20, dated 3/4/94 in Case No. 93-434 (wherein Roy Mundy, preceding President of KAWC, stated

67-68:17-25, 1-25.) If KAWC were not able to withdraw that amount, it would contemplate securing access to an additional source of raw water. (*See id.*) Perhaps most tellingly, she testified that "Certainly, an Ohio River connection has been contemplated, but it is not part of this application." (*Id.* at 17:4-9.)

Even given KAWC's own preliminary estimates of an additional \$47 to \$98 million in cost associated with a pipeline connecting the proposed Pool 3 plant with the Ohio River (*see* KAWC Resp. to CAWS Second Supp. Data Request No. 10), it is easy to see why KAWC would deflect attention from the "Ohio River back-up." The cost of KAWC's plan, including Ohio River backup is simply staggering.

4. Rate Effect to KAWC Ratepayers.

The day after the November 2007 hearing in this matter was completed, KAWC received permission to implement a fifteen percent increase in its annual revenues. (*See In the Matter of Adjustment of the Rates of Kentucky-American Water Company*, Kentucky Public Service Commission, Case. No. 2007-00143, Order of November 29, 2007 at 5.) KAWC witness Mr. Rowe testified that this fifteen percent increase does not include any costs associated with the Pool 3 proposal. (*See* Test. of N. Rowe, November 2007 Hearing Transcript, v.1 at 48:5-10.)

KAWC further indicated that the Pool 3 proposal would necessitate the filing of two additional rate cases: one in 2008, and one in 2010. (*See id.*) With respect to the 2008 rate case, KAWC estimates a rate increase of more than fifteen percent. (*See* KAWC Supp. Resp. (dated Feb. 29, 2008) to Commission Staff First Interrogatory No. 31.) It estimates a rate increase of more than eighteen percent for the 2010 rate case. (*See id.*) Cumulatively, this totals a rate increase of nearly forty percent (36.81%) from KAWC's rates approved in the 2007 rate case. (*See id.*) Taken together with the recently approved revenue requirement increase, KAWC proposes that its ratepayers should bear the burden of a more than fifty percent rate increase in the span of just three years. These figures do not include the additional cost increase of more than \$5,000,000 that has recently materialized. (*See* Test. of L. Bridwell, March 2008 Hearing Transcript, v.2 at 82:1-7 (indicating a recent cost increase of \$5,453,394); *see also* Test. of M. Miller, March 2008 Hearing Transcript, v.2 at 129-30:23-25, 1-2 (indicating that the cost increase identified by Ms. Bridwell has not been factored into the projected rate-increase charts and tables provided by KAWC).)

When supplemental water from the "Ohio River back-up" is needed, those ratepayers can expect yet another significant rate increase in addition to the sixty percent already contemplated.

that the appropriate timeframe for evaluating the least-cost alternative to KAWC ratepayers is "a period of 50 years."))

C. The Louisville Pipeline.

1. LWC's Proposal.

LWC's current Louisville Pipeline proposal represents a better alternative than the Pool 3 proposal for at least six reasons.

- ✓ First, the Louisville Pipeline provides a two-river solution, thereby providing "a significant advantage in the event of natural or manmade disaster." (See Rebuttal Test. of G. Heitzman at 11:13-14.)
- ✓ Second, "On a twenty-year or forty-year time frame, the Louisville Pipeline has a present worth cost advantage of approximately 25 to 40 percent." (Test. of E. Wetzel, November 2007 Hearing Transcript, v. 3 at 329:6-8; *see also* Rebuttal Test. of G. Heitzman at 11:6-8.)
- ✓ Third, "[t]he Louisville Pipeline does not require the construction of a treatment plant or the expansion of existing water treatment facilities."²⁰ (Rebuttal Test. of G. Heitzman at 11:2-3.) It would also provide KAWC with access to "the abundant supply of the Ohio River which is the watershed for a 14-state region and (with an average flow of nearly ninety billion gallons of water per day) the largest river in the United States east of the Mississippi." (*Id.* at 11:14-16.)
- ✓ Fourth, it "optimizes the use of existing infrastructure through regional cooperation, and it discourages unnecessary duplication of, and excessive investment in, water facilities." (*Id.* at 12:6-8.)
- ✓ Fifth, it "will be installed along an interstate right-of-way, in an area that is already largely developed and already encumbered with other utility facilities." (*Id.* at 11:9-10.)
- ✓ Sixth, LWC has a history of lower water rates than KAWC. (For example, LWC's current residential rate is \$19.78 per 6000 gallons while KAWC's current residential rate is \$26.61 per 6000 gallons.²¹ Accordingly, KAWC's residential customers

²⁰ "LWC already has a treatment plant capacity that is more than adequate to address Central Kentucky's water supply deficit." (*Id.* at 11:3-5.)

²¹ LWC's \$19.78 residential rate is based on a monthly 5/8-3/4" meter fee of \$5.92, plus \$6.69 for the first 3000 gallons of water, plus \$7.17 for the next 3000 gallons of water. KAWC's

already pay a 35% premium compared to LWC's residential customers. Likewise, LWC's current wholesale rate is \$1.71 per 1000 gallons while KAWC's current wholesale rate is \$2.68 per 1000 gallons. Accordingly, KAWC's wholesale customers already pay a 57% premium compared to LWC's wholesale customers.)

LWC witness Mr. Heitzman's rebuttal testimony describes the details of the Louisville Pipeline alternative. (*See id.*) Without reproducing that entire proposal here, the key points are as follows. LWC will wholesale water to KAWC and other public entities located along and around the I-64 corridor where the pipeline would be constructed. (*See id.*) That pipeline would be sized to provide 25 MGD of water to any water providers electing to purchase from LWC. (*See id.*) On an emergency basis, the pipeline could transport up to 35 MGD of water, if needed. (*See id.*) The water would be priced at \$1.71 per 1000 gallons, and that price would remain unchanged through 2015. (*See id.*) In 2016, the water rate would adjust for the cumulative change in the CPI-U between 2008 and 2015. (*See id.*) Thereafter, the water rate would adjust annually for cost of service, up to the change in the preceding year's CPI-U, plus two percent.²² (*See id.*)

The pipeline delivering the water would be built in two phases. (*See id.*) The first phase would be completed by 2010, and it would involve: (i) the construction of a pipeline between

\$26.61 residential rates is based upon its tariffed monthly 5/8" meter fee of \$7.95, plus \$18.66 for 6000 gallons of water.

²² Decisions regarding such adjustments would be made by the Board of Water Works, the board of directors of LWC. In addition, although LWC acknowledges that its proposed wholesale rate is not before the Commission, the Commission's jurisdiction over any wholesale purchase arrangement between LWC and KAWC is limited to approval of the water supply contract that would be negotiated to implement the Louisville Pipeline proposal. (*See In the Matter of Alleged Failure of the City of North Middletown to Comply with KRS 278.160 and 278.180 and the Commission's Order of August 10, 1994 in Administrative Case No. 351*, Kentucky Public Service Commission, Case No. 2006-00072, Order of January 12, 2007 at *16, n.18 (providing that "[w]here [a] water purchase contract to contain ['a precise rate-making formula or an automatic mechanism for passing through increases in a supplier's rates'], [the Commission] would not consider ... application of this formula [or automatic mechanism] to reflect changes in its supplier's rates to constitute a rate adjustment and [it] would not be considered a violation of KRS 278.160 or 278.180") (citation omitted). Moreover, because the water rates contained in LWC's proposal are largely tied to the mathematical formula of cost-of-service, with a CPI-U cap, there is no basis to believe that the proposed rates would be unreasonable to KAWC or require repeated resubmittals throughout the term of the agreement. (*See id.*) In any event, CPI adjustment caps are expressly recognized and approved as a rate-adjusting mechanism by KRS 278.516 and KRS 278.543. (*See id.*) LWC would also point out that it has historically been far more successful at delivering low-cost water (both retail and wholesale) than KAWC.

LWC's planned facilities at the I-64/Kentucky Highway 53 intersection to the Frankfort Plant Board's water treatment plant on the Kentucky River ; and (ii) the construction of a pipeline between KAWC's facilities at the I-64/Newtown Pike intersection and the Frankfort Plant Board's water treatment plant on the Kentucky River. (*See id.*) This phase would allow LWC to deliver up to 10 MGD of water to Frankfort. (*See id.*) The Frankfort Plant Board, in turn, could thereby make available 6 MGD of its existing capacity for delivery to KAWC. (*See id.*) This would solve KAWC's previous difficulty securing water from Frankfort on an interim basis while a more permanent solution is implemented. (*See supra.*)

The second phase would be completed by 2012, and it would involve constructing the connecting portion of the pipeline that crosses the Kentucky River. (*See id.*) Upon completion of that second phase, the pipeline would be operational to a capacity of 25 MGD (up to 35 MGD, if needed, on an emergency basis). (*See id.*)

2. KAWC's Support of the Bluegrass Water Project.

Augmenting its source of supply by purchasing treated water from LWC is not a foreign concept to KAWC. Throughout the 1990's, KAWC championed a pipeline to Louisville as the best solution for its lack of adequate water supply from the Kentucky River. (*See Case No. 2000-00120, Order of November 27, 2000 at 39 ("Since December 1992, [KAWC] has openly displayed its preference for a pipeline solution.")*). According to KAWC, there were no "technical, engineering, or legal impediments" to the Bluegrass Water Project. (*See KAWC Resp. to CAWS First Supp. Data Requests No. 9(b).*)

In June of 1998, KAWC's public relations efforts touted the Bluegrass Water Project as a winner for its ratepayers and the region:

- ✓ Kentucky-American has identified the construction of a 52.5-mile pipeline to the Ohio River as the best alternative to Lexington and surrounding counties' water needs.
- ✓ [Recent studies acknowledge] the dramatic deficit existing in the Kentucky River. The unpredictability of the river flows continues to be a serious concern to those living in Central Kentucky.
- ✓ The option to purchase treated water from Louisville Water Company will eliminate the need for additional investments in plant capacity to overcome the treatment plant deficit.
- ✓ The environmental solution to protect our water source (the Kentucky River) and provide Central Kentucky with an adequate water supply is the development of a pipeline to the Ohio River.
- ✓ The Ohio River is a limitless source of water, providing

communities existing along the banks of the Ohio with a continual source of supply.

- ✓ The construction of the pipeline and booster stations over 52.5 miles would contribute a much-needed water supply and cause no environmental impact to the region.
- ✓ The Central Kentucky region is not the first to consider a transmission pipeline to maintain the community's water needs. Similar pipelines are successfully meeting the needs of providing water service to people all over the United States, such as the Metropolitan Water District serving a large part of Southern California. Hundreds of miles of pipeline provide communities in the Los Angeles region with water.
- ✓ [T]he Louisville Water Company has consistently met or exceeded all federal drinking water standards, producing high quality water. The Louisville Water Company is experienced in constant monitoring and effective treatment to remove any contaminants.
- ✓ Kentucky-American's philosophy of a strong responsibility to customers and heightened awareness of environmental concerns has led to the confirmation of the Bluegrass Water Project pipeline as the best environmental solution to our water supply deficit.
- ✓ Kentucky-American has explored the difficulty in attempting to build new dams, increase the existing heights of dams permanently, or using crest gates on the Kentucky River.
- ✓ The objections voiced by our neighbors in Eastern Kentucky, as well as the concerns of individuals and communities along the proposed pipeline route, have been heavily weighed by Kentucky-American Water Company through the decision process.
- ✓ Providing customers with a cost-efficient, high quality, abundant supply of water is of primary importance. Kentucky-American continues to support the construction of the pipeline as the environmental solution to the water supply deficit in our community.

("Bluegrass Water Project Update," November 2007 Hearing Transcript, LWC Exhibit 2 at 1-3.)

KAWC also estimated that the project could be timely implemented, as well. (*See id.*) In 1993, KAWC witness Ms. Bridwell stated that all work on the Louisville Pipeline could be completed within three years. (*See* “Remarks by Linda Bridwell, Planning Engineer Kentucky-American Water Company to the Kentucky River Authority,” November 2007 Hearing Transcript, LWC Exhibit 7 at 7 (“Any design work that is required should be underway by the spring of 1994 – that’s barely more than a year away. Actual construction of whatever project we undertake should begin by the spring of 1995, so that we can have an additional source available by very early in 1997.”).) In 1998, KAWC echoed its confidence in a three year timeframe to design, construct, and place a pipeline to Louisville in service. (*See* “Bluegrass Water Project Update,” November 2007 Hearing Transcript, LWC Exhibit 2 at 6 (proposing preliminary work to begin in May of 1998 with the “pipeline in service providing water” by June of 2001).) This evidence clearly illustrates the posturing aspect of KAWC’s recent allegations that the Louisville Pipeline cannot be completed within even five years.²³

3. Comparison of the Louisville Pipeline and Bluegrass Water Project.

Three crucial differences distinguish the Bluegrass Water Project and the Louisville Pipeline proposal. First, the proposed routes of the two projects are significantly different. As the first page of the “Bluegrass Water Project Update” indicates, the “proposed pipeline” for the Bluegrass Water Project followed the south side of the I-64 corridor approximately slightly more than half-way from Louisville to Lexington. (*See id.* at 1.) There, it left the interstate corridor and cut a swath across the countryside through several horsefarms to a connection with KAWC’s Lexington-area water system. (*See id.* at 1.)

The Louisville Pipeline proposal, alternatively, would install a pipeline along the entire length of the already-encumbered I-64 corridor between Shelbyville and Lexington. (*See* Rebuttal Test. of G. Heitzman, Exhibit 1 (Route Map).) This route avoids the significant public opposition that plagued the Bluegrass Water Project route. It also avoids the significant public opposition associated with KAWC’s proposed Pool 3 pipeline route. There is no evidence of any current public opposition to installation of a pipeline along the interstate corridor.

Second, the Louisville Pipeline proposal emphasizes a regional solution to Central Kentucky’s water supply issues. “The Louisville Pipeline will serve as the ‘backbone’ of a water transmission grid in Central Kentucky.” (*Id.* at 4:16-17.) Between Shelbyville and Lexington, the Louisville Pipeline “is proposed to be designed, built, financed, and owned by a public-private partnership involving Central Kentucky water providers, appropriate state and local governing bodies, and potentially LWC.” (*Id.* at 5:8-11.) “Public participation in this section will make this project very attractive for State and Federal grants, as well as low interest loans from the Kentucky League of Cities, the Kentucky Association of Counties, and the Kentucky Infrastructure Authority.” (*Id.* at 5:11-14.) Moreover, by wheeling water through the grid interconnections to this “backbone,” the Louisville Pipeline will be able to supply adequate water not only to KAWC but to other water providers such as the members of the BWSC, Frankfort,

²³ By KAWC’s previous estimates, Mr. Heitzman’s proposal to have the Louisville Pipeline running by 2012 is quite conservative.

Shelbyville, and perhaps others.

Third, the interim solution presented by Phase I of the Louisville Pipeline proposal provides a financial advantage that was not contemplated with the Bluegrass Water Project. Specifically, it reduces the net present value of the Louisville Pipeline by virtue of postponing the capital cost associated with Phase II of the project. (*See* Rebuttal Test. of G. Heitzman at 4-7.) It does this while still providing KAWC with access to an interim supply of 5 MGD from Frankfort from 2010 through 2012. (*See id.* at 5:34-41, 46-48.) By combining this 5 MGD supply with an additional supply of up to 5 MGD from Versailles, and reducing its unaccounted-for water by 3 MGD, KAWC could have access year-round to more than 13 MGD by 2010. The installation of crestgates on Dam 9 of the Kentucky River would augment this supply by an additional 10 MGD over a 90 day period.

Aside from the financial advantages of this phased approach, it also provides KAWC with a better “safety net” than Pool 3 proposal's permitted maximum withdrawals of 6 MGD for nine months of the year. That is, interim access to these additional sources of water would clearly satisfy KAWC's 2010 treatment capacity deficit within the same timeframe as the Pool 3 proposal.²⁴ Moreover – because droughts do occur in September and October, when KAWC's Pool 3 supply would be only 6 MGD (*see* Test. of N. Rowe, November 2007 Hearing Transcript, v. 1 at 63:6-9) – this interim solution would also provide KAWC with more reliable drought protection in the unlikely event a drought of record recurs prior to 2012. By 2012, the Louisville Pipeline can be fully operational.

²⁴ KAWC projects this treatment capacity deficit to be 10.33 MGD in 2010, rising to 21.6 MGD in 2020. (Direct Test. of L. Bridwell at Table 2.) This peaking demand, however, would only occur “one or two or three days during a year.” (Test. of L. Bridwell, November 2007 Hearing Transcript, v.2 at 53:3-4.)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by was served via first-class United States mail, sufficient postage prepaid, on the following individuals this 20th day of March, 2008:

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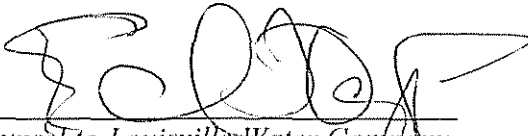
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Exhibit No. 1

LOUISVILLE PIPELINE

