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AUG 21 2007
PUBLIC SERVICE
COMMISSION

August 21, 2007

VIA HAND DELIVERY

Hon. Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Blvd.
Frankfort, KY 40601

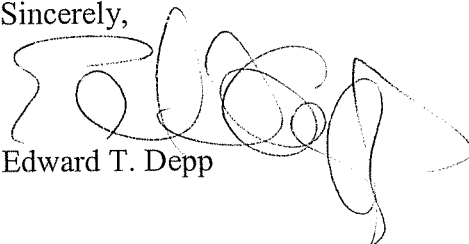
Re: *Application of Kentucky-American Water Company, a/k/a Kentucky American Water for Certificate of Convenience and Public Necessity Authorizing Construction of Kentucky River Station II ("KRS II"), Associated Facilities, and Transmission Line, Case No. 2007-00134.*

Dear Ms. O'Donnell:

We have enclosed, for filing with the Public Service Commission of the Commonwealth of Kentucky, an original and eleven (11) copies of Louisville Water Company's Motion to Amend Procedural Schedule. Please file-stamp one copy and return it to our courier.

Thank you, and if you have any questions, please call us.

Sincerely,



Edward T. Depp

ETD/lb

Enclosures

cc: All Parties of Record (w/encl.)
John E. Selent, Esq. (w/o encl.)

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RECEIVED

AUG 21 2007

PUBLIC SERVICE COMMISSION

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

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

MOTION TO AMEND PROCEDURAL SCHEDULE

Intervenor Louisville Water Company ("LWC"), by counsel, hereby moves the Public Service Commission of the Commonwealth of Kentucky (the "Commission") to amend the procedural schedule for the above-styled proceeding. The grounds for this motion are set forth below.

INTRODUCTION

1. When LWC received the Commission's extensive open records request on July 17, 2007, LWC produced the responsive documents, moved for intervention, and filed testimony in this matter as expeditiously as possible. Both the documents and LWC's testimony point out an alternative means (previously presented to various entities) by which the water needs of the Lexington-Fayette Urban County Government and surrounding areas (collectively, the "Bluegrass Region") can be served. Recognizing that only LWC can adequately explain those documents and the proposed pipeline ("Louisville Pipeline") by which those needs could be served, the Commission granted LWC's motion for intervention in order to "present issues and develop facts that will assist the commission in fully understanding the matter without unduly

complicating or disrupting the proceedings." (See August 13, 2007 Order of the Commission at 1 (hereinafter "LWC Order").)

2. Since that time, LWC has received nearly 200 information and data requests (not counting subparts) in this matter. This fact bespeaks that the parties (like the Commission) also believe LWC's participation is needed to address and explain potential alternatives to the Kentucky-American Water Company ("KAWC") proposal. And while LWC desires to respond to those data requests without prejudicially delaying the resolution of this matter, LWC needs a brief extension of the procedural schedule in order to adequately and meaningfully do so.

PROCEDURAL POSTURE

3. The Commission originally established the procedural schedule for this matter by Order dated April 20, 2007.

4. The schedule as set forth on April 20, 2007 was in effect when LWC filed its motion to intervene on July 31, 2007.

5. By Order dated August 2, 2007, the Commission revised its initial procedural schedule. In the Order, the Commission noted that the scope and complexity of the issues presented in this matter required greater time for review and analysis than the Commission had initially allotted. Four dates were revised: (i) the deadline for KAWC to respond to requests for information related to testimony of its rebuttal witnesses was moved from October 4, 2007 to October 8, 2007; (ii) the date of the informal conference to consider settlement, simplification of the issues, and hearing procedures was moved from October 8, 2007 to October 16, 2007; (iii) the public hearing date was moved from October 9, 2007 to October 18, 2007; and (iv) the deadline for written briefs was moved from November 16, 2007 to November 26, 2007.

ARGUMENT & ANALYSIS

I. LWC NEEDS TIME TO ADEQUATELY RESPOND TO THE NEARLY 200 DATA REQUESTS IT HAS RECEIVED.

6. On August 13, 2007, the Company received data requests from KAWC containing 134 requests for information and documents. Many, if not most, of those requests include multiple questions and/or subparts, and LWC will require a reasonable time to respond.

7. In addition to these data requests from KAWC, LWC must also respond to more than sixty information requests (most of which also contain multiple questions and/or subparts) from other parties and the Commission's staff.

8. The current procedural schedule requires LWC to file and serve responses to those nearly 200 requests for information (not counting subparts) no later than August 27, 2007, just two weeks from the date of service of those requests. Given the breadth of the information requested, LWC will require significantly longer than two weeks to respond.

9. Because of the extensive evaluation, review, and document assembly that will be required to respond to these data and information requests, LWC will need approximately sixty days to respond. Therefore, in order to allow LWC to prepare adequate, useful responses to KAWC's multitude of data requests, as well as the numerous data requests made by the other parties and the Commission, LWC requests that the Commission amend the procedural schedule in accordance with the proposed schedule attached hereto as Exhibit 1.

II. LWC NEEDS TIME TO PREPARE, AND PERMISSION TO FILE, TESTIMONY REBUTTING THE TESTIMONY OF THE ATTORNEY GENERAL'S EXPERT WITNESS.

10. In addition to additional time to respond to the data requests, as described above, LWC also seeks the opportunity to respond to the testimony filed in this matter by the Office of the Attorney General ("Attorney General").

11. The current procedural schedule allows KAWC the opportunity to respond to intervenors, but it does not contain a procedure by which intervenors may respond to each other. The Attorney General's expert witness (Scott Rubin) has made a number of assertions relating to the viability of the Louisville Pipeline alternative that the Commission has indicated it is evaluating. (*See* LWC Order at 1 ("... the Commission must review all options that [KAWC] considered to resolve its supply deficit".)) LWC has a due process right to respond to other intervenors;¹ additionally, rebuttal testimony will better enable the Commission to evaluate any alternative, including the Louisville Pipeline alternative. LWC can timely construct a cost-effective pipeline ("the Louisville Pipeline") and supply reasonably-priced water to the Bluegrass Region without endangering the long-term viability of LWC's water source and without wasteful investment. LWC's rebuttal testimony will support these conclusions.

12. LWC's explanatory rebuttal testimony will provide additional information that should alleviate Mr. Rubin's concerns regarding the alleged lack of certainty surrounding LWC's proposal to wholesale water to KAWC. (*See* August 13, 2007 Order of the Commission at 1 ("As LWC possesses evidence and is uniquely situated to present evidence regarding one option that KAWC considered and rejected, we find that LWC's intervention is likely to present issues and develop facts that will assist the Commission in fully understanding the matter without unduly complicating or disrupting the proceedings.").)

13. LWC, therefore, requests that the Commission grant it the right to file testimony rebutting the Attorney General's testimony in this matter by October 19, 2007. (*See* Exhibit 1.)

¹ Parties that may be affected by the outcome of an administrative proceeding are entitled to procedural due process. *Am. Beauty Homes Corp. v. Louis. and Jeff. Co. Planning and Zoning Comm'n*, 379 S.W.2d 450, 456 (Ky. App. 1964), *citing* *Ky. Alcohol Beverage Control Bd. v. Jacobs*, 269 S.W.2d 189 (Ky. App. 1954). "Procedural due process includes a hearing, the taking and weighing of evidence, a finding of fact based upon consideration of the evidence, [and] the making of an order supported by substantial evidence." *Jacobs*, 269 S.W.2d at 192.

III. LWC NEEDS TIME TO ADEQUATELY INCORPORATE THE INFORMATION AND FINDINGS OF R.W. BECK'S FORTHCOMING REPORT INTO ITS RESPONSES TO THE DATA REQUESTS AND PROPOSED REBUTTAL TESTIMONY.

14. In addition to the foregoing, LWC has engaged the consulting firm of R.W. Beck to provide a financial analysis of the Louisville Pipeline and the Pool 3 Treatment Plant alternative. Using a consistent cost methodology, R. W. Beck is updating previous Louisville Pipeline cost estimates. This report is expected to be completed in September 2007.

15. The R.W. Beck report will provide critical information to the Commission as it considers the issues presented by this matter. The Louisville Pipeline alternative provides an unlimited supply of water from the Ohio River, provides a low cost solution, provides a more practical solution that does not duplicate facilities, and provides a regional solution conducive to grants and low-interest loans. LWC believes the R.W. Beck report will support these conclusions. It is, therefore, imperative that LWC be allowed sufficient time to incorporate the information contained in the R.W. Beck analysis into its responses to KAWC's data requests, its responses to the data requests of the other parties, and its rebuttal to the testimony of Mr. Rubin. Without this opportunity, the Commission will not be able to evaluate the most current, thorough and accurate assessment of this alternative.

16. Not only will the report support some of the documents LWC produced pursuant to the Commission's open records request, it will also rebut some of the conclusions contained in Mr. Rubin's testimony.

17. Therefore, in order to ensure that LWC is able to provide the most thorough and accurate information in its possession to the Commission, LWC respectfully moves the Commission to allow it time to receive, examine, utilize, and present the information contained in the R.W. Beck report. (*See Exhibit 1.*)

IV. LWC NEEDS ADEQUATE TIME TO EXAMINE THE ISSUES AND PREPARE AND PRESENT THE COMMISSION WITH ACCURATE INFORMATION ABOUT THE LOUISVILLE PIPELINE ALTERNATIVE.

18. LWC is a public entity, formed in 1854 by legislative charter and wholly-owned by the Louisville/Jefferson County Metro Government. LWC has a history of being a regional partner and supplying water outside of the Jefferson County service area. Expansion of its service area and existing wholesale contracts has benefited the public convenience and necessity of the Commonwealth. Continuing in its role as a regional partner, LWC believes that the Louisville Pipeline is an alternative to the proposed facilities being considered by the Public Service Commission and that it is an alternative that should be considered when the PSC determines whether the public convenience and necessity require the construction of KAWC's proposed facilities and whether those facilities will result in wasteful investment.

19. As a public entity, however, LWC consults with its owner (the Louisville/Jefferson County Metro Government), its governing Board (the Board of Water Works), and its professional staff. These entities have a stake in the role LWC plays in the region, and decisions about expanded operations of an entity such as LWC must be made deliberately and thoughtfully. That deliberation takes time.

20. It is clear that KAWC worked for an extensive period of time, perhaps in excess of a year, preparing its application to the Commission in this matter. That application was made on March 30, 2007. As of the date of this filing, LWC has only had notice of KAWC's plans for just over four months. The Commission's apparent interest in the Louisville Pipeline alternative was confirmed by the open records requests received less than one month ago, and LWC was granted intervenor status only a week ago.

21. LWC does not request an inordinate amount of time to respond to data requests or prepare and file rebuttal testimony or otherwise present evidence regarding the Louisville Pipeline alternative. But, if LWC is to be entitled to the full rights of a party to this proceeding in accordance with the Commission's order granting it intervenor status, LWC requires at least a brief extension of time to respond to an overwhelming number of data requests and otherwise present additional rebuttal testimony that will help explain the Louisville Pipeline alternative "that KAWC considered and rejected[.]" (LWC Order at 1.)

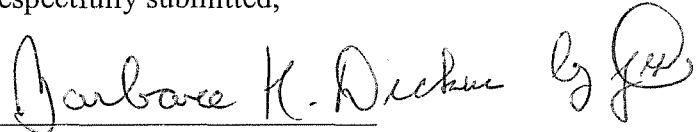
22. Even with the amendments to the procedural schedule requested, LWC proposes that the hearing and briefing process be extended only from November 26, 2007 to January 9, 2007: 45 days. This is an insignificant amount of time given the long-lasting implications of the decisions before the Commission in this matter. (*See* Exhibit 1.) Neither the Commission nor any party will be prejudiced by such a brief extension; instead, it will allow for a more thorough, considered ruling on KAWC's application.

CONCLUSION

LWC recognizes the importance of this matter to the Commission, the Commonwealth, and all parties involved. It does not wish to delay or otherwise hinder the development of the record in this matter. However, in order to adequately and effectively respond to KAWC's 134 data requests (exclusive of subparts), the Commission's and the intervenors' additional 61 data requests (also exclusive of subparts), and the testimony of the Attorney General's expert witness, LWC requires a brief extension of the procedural schedule. This extension will not prejudice any party, and it will help the Commission meaningfully develop issues and facts surrounding KAWC's application and the Louisville Pipeline alternative. Therefore, LWC respectfully requests that the Commission enter an order amending its procedural schedule, as proposed in

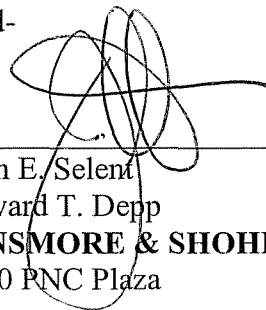
the attached Exhibit 1.² Specifically, LWC requests that: (i) the Commission allow LWC until October 12, 2007 to file its responses to the requests for information served upon it; and (ii) the Commission permit LWC to file rebuttal testimony to the Attorney General's testimony in this matter by not later than October 19, 2007.

Respectfully submitted,



Barbara K. Dickens
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Louisville Water Company
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-and-



John E. Selent
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² As additional grounds for this motion, LWC notes that, due to pre-existing conflicts that cannot be rescheduled without great expense and difficulty, its two lead attorneys are scheduled to be out of the state and out of the country on October 18, 2007, the date of the public hearing in this matter.

The initially-scheduled public hearing date of October 9, 2007 did not present a conflict for any of LWC's attorneys, but the revised public hearing date of October 18, 2007, unfortunately, presents two substantial conflicts. Barbara Dickens, Vice President and General Counsel of LWC has a prepaid trip scheduled out of town from October 17 through October 22, 2007 and John Selent, outside lead counsel for LWC, has a prepaid trip out of the country from October 17 through October 31, 2007.

LWC reiterates that neither of these trips presented a conflict with the initial public hearing date of October 9, 2007, and LWC has been diligent in ensuring that it would be available and prepared for all aspects of this proceeding. Nevertheless, in light of the recently revised procedural schedule and the reasons set forth elsewhere in this motion, LWC respectfully requests that the Commission grant this motion to avoid the prejudice, expense, and difficulty that would result from maintaining the October 18, 2007 hearing date.

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Louisville, KY 40202
tel: (502) 540-2300
fax: (502) 585-2207

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 21st day of August, 2007:

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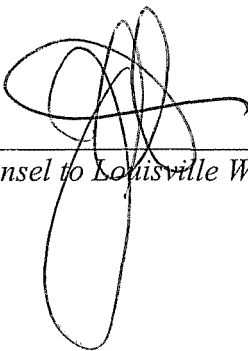
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Counsel to Louisville Water Company

REVISED PROCEDURAL SCHEDULE IN CASE NO. 2007-00134
 BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION
 (EFFECTIVE _____, 2007)

- All parties and Commission Staff may serve their initial requests for information upon Kentucky-American no later than..... 05/07/2007

- Kentucky-American shall file with the Commission and serve upon all parties of record its responses to the initial requests for information no later than..... 05/21/2007

- All parties and Commission Staff may serve their supplemental requests for information upon Kentucky-American no later than..... 06/04/2007

- Kentucky-American shall file with the Commission and serve upon all parties of record its responses to the supplemental requests for information no later than..... 06/18/2007

- All parties and Commission Staff may serve their second supplemental requests for information upon Kentucky-American no later than.....07/02/2007

- Kentucky-American shall file with the Commission and serve upon all parties of record its responses to the second supplemental requests for information no later than..... 07/16/2007

- Intervenor testimony, if any, shall be filed with the Commission in verified prepared form no later than.....07/30/2007

- All requests for information to any Intervenor may be served upon that Intervenor no later than..... 08/13/2007

- Intervenors shall file with the Commission and serve upon all parties of record their responses to the requests for information no later than.....10/12/2007

- LWC shall file rebuttal testimony, if any, to the testimony of the Attorney General's expert witness no later than.....10/19/2007

- Kentucky-American may file with the Commission and shall serve upon all parties of record the testimony of its rebuttal witnesses, if any, in written verified form no later than..... 10/26/2007

- Public Hearing shall begin at 5:00 p.m., Eastern Daylight Time, in School Auditorium, Owen County High School, 2340 Highway 22 East, Owenton, Kentucky, for the purpose of receiving public comment on the proposed construction..... 10/29/2007

- Public Hearing shall begin at 5:00 p.m., Eastern Daylight Time, in School Auditorium, Paul Lawrence Dunbar High School, 1600 Man O'War Boulevard. Lexington, Kentucky, for the purpose of receiving public comment on the proposed construction..... 10/30/2007

- Public Hearing shall begin at 5:00 p.m., Eastern Daylight Time,

in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky, for the purpose of receiving public comment on the proposed construction..... 11/01/2007

All parties and Commission Staff may serve upon Kentucky- American requests for information related to the testimony of its rebuttal witnesses no later than.....11/09/2007

Kentucky-American shall file with the Commission and serve upon all parties of record its responses to the requests for information related to the testimony of its rebuttal witnesses no later than.....11/28/2007

An informal conference will begin at 9:30 a.m., Eastern Daylight Time, in Conference Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky to consider the possibility of settlement, the simplification of issues, hearing procedures, and any other matters that may aid in the handling or disposition of the proceedings..... 12/07/2007

Public Hearing is to begin at 9:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky, for the purpose of cross-examination of witnesses of Kentucky-American and Intervenor(s)..... 12/10/2007

Written briefs shall be filed with the Commission and served on all parties of record no later than.....01/09/2008

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