

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

O R D E R

Louisville Water Company ("LWC") has moved to amend the existing procedural schedule in this matter to extend the time in which it may respond to information requests and to permit its filing of rebuttal testimony. Lexington-Fayette Urban County Government ("LFUCG") has moved to establish limits on further intervention related to the consideration of competing proposals. The remaining parties have responded to LWC's motion. Having considered these motions and responses, we grant LWC's motion in part, but do not adopt LWC's proposed procedural schedule. Instead, the Commission has amended the existing procedural schedule to provide LWC additional time to respond while still providing for the matter to stand submitted by the end of this year. We grant LFUCG's motion.

This matter involves Kentucky-American Water Company's ("KAWC") application for a certificate of public convenience and necessity to construct a 20 million gallon per day water treatment plant in Owen County, Kentucky, on the Kentucky River and approximately 160,000 linear feet of 42-inch water transmission main to transport the treated water from this plant to KAWC's facilities in Fayette County, Kentucky. These

facilities are intended to resolve a water supply deficit that the Commission has examined extensively since 1993.¹

On July 31, 2007, over 3 months after KAWC filed its application in this matter and over 2 months after we had established a procedural schedule to permit the review and final decision on this application before year end, LWC moved to intervene in this matter. LWC filed its motion on the same day in which all intervening parties were required to submit the written testimony of their witnesses.

With its motion LWC also tendered the written testimony of Greg Heitzman, LWC's president. In his testimony, Mr. Heitzman asserts that LWC is willing to provide water to KAWC through the construction of a water transmission main from Jefferson County to Fayette County ("Louisville Pipeline") at a lower cost than the cost of water produced at and transported from KAWC's proposed water treatment plant. Despite his contention that LWC "is in a unique position to meet this need with less cost to end-user customers," Mr. Heitzman provided few specifics and, except for a copy of a presentation made to the Lexington-Fayette Urban County Council earlier that month, no supporting documentary evidence.²

On August 13, 2007, the parties and Commission Staff served upon LWC requests for production of documents related to Mr. Heitzman's testimony. KAWC served approximately 134 requests which sought information about LWC's operation and management practices as well as LWC's proposal to sell water to KAWC and the

¹ Case No. 1993-00434, An Investigation Into The Source of Supply and Future Demand of Kentucky-American Water Company (Ky. PSC Nov. 19, 1993).

² Prefiled Direct Testimony of Greg Heitzman at 5.

proposed Louisville Pipeline. Commission Staff and other parties served approximately 60 requests upon LWC. The existing procedural schedule required LWC's responses to these requests no later than August 27, 2007.

On August 21, 2007, LWC moved to amend the procedural schedule. It proposed modifications in the existing procedural schedule that would permit an additional 34 days to respond to the information requests. It further requested an opportunity to file testimony to rebut the Attorney General's ("AG") testimony. Under its proposed procedural schedule, a hearing in this matter would be held on December 13, 2007 and the matter would stand for decision on January 9, 2008.

In support of its motion, LWC contends that the requests for information require "extensive evaluation, review, and document assembly."³ It further contends that it should be afforded the opportunity to respond to the AG's testimony regarding the viability and cost-effectiveness of constructing the Louisville Pipeline in lieu of KAWC's proposed construction. It also states that additional time is needed to incorporate the findings of a consultant's report on the proposed Louisville Pipeline that LWC has commissioned. This report updates previous cost estimates on the Louisville Pipeline's cost. Use of this information, LWC asserts, will ensure that the Commission has the most current, thorough, and accurate assessment of the LWC alternative.

All parties, with the exception of Citizens for Alternative Water Solutions ("CAWS") and the AG,⁴ oppose any extension of time to respond to the information

³ LWC's *Motion to Amend Procedural Schedule* at 3.

⁴ The AG has taken no position on LWC's request for an extension of time to respond to information requests.

requests. Opponents of the motion contend that LWC has not shown cause for the postponement. They assert that LWC has been aware of KAWC's proposal for at least 4 months prior to its intervention and has had adequate time to develop its position.⁵ They further note that LWC is a large water utility, has retained a large law firm to represent its interests, and should be well equipped to respond to the information requests. The requested delay, they assert, will unduly disrupt the proceeding and will prevent the utility from meeting required deadlines for the acceptance of bids and issuance of construction contracts.

The AG opposes LWC's motion for leave to present testimony to rebut his witness's testimony. He argues that LWC has no burden of proof in this proceeding and that it has filed no testimony in this proceeding. Its failure to file testimony or otherwise pursue its available options, the AG asserts, does not create a right to file rebuttal testimony. As LWC has the right to conduct discovery on the AG, to cross-examine his witness at hearing, and to submit written briefs in opposition to the AG's position, the AG maintains that LWC has been afforded adequate due process and does not require any special treatment.

Upon our first observation, we find considerable merit in the arguments of the motion's opponents. KAWC's application has been well publicized.⁶ Moreover, LWC has been aware of KAWC's intentions since KAWC's public announcement to construct

⁵ See, e.g., Response and Objection of Bluegrass Water Supply Commission at 2 – 3.

⁶ See, e.g., Andy Meade, Third Water Plant Sought, Lexington Herald-Leader, Mar. 31, 2007, at A1.

the proposed facilities in March 2006.⁷ LWC has been present at governmental meetings in which KAWC presented its plans for the proposed water treatment plant.⁸ LWC has participated in studies regarding Central Kentucky's water supply in 2003 and presented LWC as a possible water source.⁹ It clearly had the opportunity to intervene earlier in this matter.

Furthermore, LWC's contention that the scope and size of the information requests require an extension of 60 days is unsupported. Parties to Commission proceedings often encounter extensive requests for information comparable to those presented to LWC and have been able to comply. Given the size and complexity of LWC's operations, its long existence, its reputation within the water industry, and its retained legal counsel, we are skeptical of its professed inability to respond in an adequate and timely fashion.

Notwithstanding these observations, the Commission is also aware that the matter before us has significant implications to KAWC ratepayers and to all of Central Kentucky. The proposed facilities are estimated to cost approximately \$160,000,000.¹⁰ These costs will be included in the cost of water for a generation of ratepayers. Given the magnitude of the cost, we are of the opinion that our review should consider the

⁷ See, e.g., Andy Meade, Water Firm Set to Build Plant, Lexington Herald-Leader, Mar. 15, 2006, at A1.

⁸ Response and Objection of Bluegrass Water Supply Commission at 2 – 3.

⁹ See, e.g., Louisville Water Company Presentation to Bluegrass Water Supply Consortium (May 12, 2003) (found at LWC Response to Commission Staff Open Record Request of July 17, 2007 at Item 9).

¹⁰ KAWC Application at ¶ 12.

existence of other viable options in determining the need and reasonableness of the proposed facilities.

While an expeditious review of this matter is very desirable, KAWC's source of supply deficit and possible solutions has been before the Commission for at least 14 years. KAWC has required 10 years to develop and present to this Commission a viable proposal for resolving this problem.¹¹ In light of the length of time already expended in reviewing KAWC's supply deficit and possible solutions, the Commission finds that a delay of 30 to 45 days will not unduly threaten the public interest or impede a final solution.

The Louisville Pipeline is not a recent or unstudied alternative. KAWC once considered the Louisville Pipeline as its solution to the supply deficit and had entered into a water supply contract with LWC in 1999. It, however, lost interest when the Lexington-Fayette Urban County Council urged a Kentucky River solution to the supply deficit.¹² The Bluegrass Area Development District and the Bluegrass Water Supply Consortium also studied the Louisville Pipeline as a potential solution. A Water System Regionalization Feasibility Study, which they commissioned, found in 2004 that

¹¹ Case No. 1993-00434, An Investigation Into The Source of Supply and Future Demand of Kentucky-American Water Company (Ky. PSC Aug. 21, 1997) (directing KAWC to "take the necessary and appropriate measures to obtain sources of supply so that the quantity and quality of water delivered to its distribution system shall be sufficient to adequately, dependably, and safely supply the total reasonable requirements of its customers under maximum consumption through the year 2020.").

¹² KAWC Application at 9.

purchasing water from LWC was the "lowest cost alternative" of several regional options.¹³

As no evidence regarding the Louisville Pipeline has been presented to this Commission in a prior formal proceeding, our refusal to consider evidence regarding the Louisville Pipeline option could weaken public confidence in a final decision in this proceeding. The public expects the Commission to determine the need for and reasonableness of investment in the proposed facilities in light of all known and viable options. We cannot turn a blind eye to the existence of the Louisville Pipeline. To do so would be an abdication of our statutory duty.

Accordingly, the Commission will allow LWC until October 1, 2007 to respond to information requests and to present testimony to rebut the AG's witness. Our action, however, should not be construed as a blank check. LWC will not be permitted further extensions of time. If it cannot provide the required documents and testimony within the time permitted, we will draw the appropriate conclusions from its failure to do so.

The Commission will also modify the procedural schedule to permit an additional round of information requests to LWC and to permit KAWC and the AG to file rebuttal and surrebuttal testimony. Finding that the LFUCG's motion to limit further intervention in this proceeding should be granted, we have by this Order also established a specific time period in which any person who wishes to intervene for the purpose of presenting evidence on other alternatives must seek intervention and file the testimony of his or her

¹³ O'Brien & Gere, Engineers, Inc. Final Report for the Water System Feasibility Regionalization Study (Feb. 27, 2004) at 24.

witnesses. With these changes, the scheduled hearing¹⁴ in this matter will begin on November 26, 2007. This matter will stand submitted for decision with the submission of written briefs on or before December 21, 2007.

IT IS THEREFORE ORDERED that:

1. LWC's Motion to Amend Procedural Schedule is granted.
2. The procedural schedule set forth in the Appendix to this Order is substituted for and replaces the procedural schedule set forth in the Appendix to our Order of August 2, 2007.
3. LFUCG's Motion to Establish Deadline is granted.
4. Any motion for intervention in this proceeding for the purpose of presenting information regarding alternative proposals to the proposed facilities must be filed no later than October 1, 2007 and must be accompanied by the written testimony of all witnesses that the movant intends to present at the hearing on KAWC's application.
5. All provisions of the Commission's Orders of April 20, 2007 and August 3, 2007 that do not conflict with this Order shall remain in full force and effect.

¹⁴ We have not revised the dates for the public meetings on the proposed facilities. Rescheduling these events present significant logistical concerns. Moreover, the public may submit comments to the Commission on the proposed facilities following these forums through written comments and electronic mail until the record of this proceeding closes on December 21, 2007.

Done at Frankfort, Kentucky, this 5th day of September, 2007.

By the Commission

ATTEST:


Executive Director

Case No. 2007-00134

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2007-00134 DATED September 5, 2007

All parties and Commission Staff may serve their initial requests
for information upon Kentucky-American no later than05/07/2007

KAWC shall file with the Commission and serve upon all parties
of record its responses to the initial requests for information no later than05/21/2007

All parties and Commission Staff may serve their
supplemental requests for information upon KAWC
no later than06/04/2007

Kentucky-American shall file with the Commission and serve
upon all parties of record its responses to the supplemental requests
for information no later than06/18/2007

All parties and Commission Staff may serve their second
supplemental requests for information upon KAWC no later than07/02/2007

KAWC shall file with the Commission and serve upon all parties
of record its responses to the second supplemental requests for
information no later than07/16/2007

Intervenor testimony, if any, shall be filed with the
Commission in verified prepared form no later than07/30/2007

Public meeting 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.....09/10/2007

Public meeting 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 construction09/12/2007

Public meeting 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.....09/13/2007

LWC shall file its responses to requests for information
no later than 10/01/2007

LWC shall file rebuttal testimony, if any, to the testimony of
AG's witness no later than 10/01/2007

All parties and Commission Staff may serve upon LWC
requests for information related to the testimony of its rebuttal witnesses
no later than 10/15/2007

LWC shall file its responses to requests for information
no later than 10/29/2007

KAWC 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 11/13/2007

AG may file with the Commission and shall serve upon
all parties of record the testimony of its surrebuttal witnesses, if any,
in written verified form no later than 11/13/2007

An informal conference will begin at 9:30 a.m., Eastern
Standard 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 11/20/2007

Public Hearing is to begin at 10:00 a.m., Eastern Standard Time,
in Hearing Room 1 of the Commission's offices at 211 Sower
Boulevard, Frankfort, Kentucky, for the cross-examination
of witnesses..... 11/26/2007

Written briefs shall be filed with the Commission and served
on all parties of record no later than 12/21/2007