

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.
CONVENIENCE AND NECESSITY )	2007-00134
AUTHORIZING THE CONSTRUCTION OF )	
KENTUCKY RIVER STATION II, ASSOCIATED )	
FACILITIES AND TRANSMISSION MAIN )	

O R D E R

Finding that additional information is required to ensure a complete and thorough review of Kentucky-American Water Company's ("Kentucky-American") application, the Commission, on its own motion, amends the procedural schedule in this matter and directs Kentucky-American and certain other parties to respond to post-hearing requests for information.

Kentucky-American has applied for a Certificate of Public Convenience and Necessity ("CPCN") to construct a water treatment plant on Pool 3 of the Kentucky River and a 30-mile pipeline to transport water from this plant to its existing water distribution system at an estimated cost of \$160,000,000. To obtain a CPCN, Kentucky-American must demonstrate "the need for a new service system or facility from the standpoint of service requirements and an absence of wasteful duplication resulting from the construction of the new system or facility."<sup>1</sup> Wasteful duplication, Kentucky

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<sup>1</sup> Kentucky Utilities Co. v. Public Service Comm'n, 252 S.W.2d 885, 890 (Ky. 1952).

courts have held, “embraces the meaning of an excessive investment in relation to productivity.”<sup>2</sup> Simply put, Kentucky-American must demonstrate that it has considered all reasonable alternatives to resolve its water supply needs and that its proposed facilities represent the most reasonable solution to those needs.

Our review of the existing record indicates that, while most of the parties in this proceeding have formally adopted a position on the proposed facilities, Lexington-Fayette Urban County Government (“LFUCG”) has not. Its silence is perplexing. Kentuckians living within LFUCG’s boundaries comprise most of Kentucky-American’s existing retail customer base. Arguably, our decision will have a greater impact upon LFUCG’s constituents than that of any other party to this proceeding. This is perhaps confirmed by the fact that LFUCG was the sole member of the Blue Grass Water Supply Commission (“BGWSC”) to seek intervention in this case – the other members being content to have their interests represented collectively. In two separate letters, LFUCG council members have urged the Commission to carefully evaluate the evidence before making a decision. These letters are now in the record of the case.

The first of these letters, dated November 27, 2007, was signed by 10 council members and the vice-mayor. The second one, dated December 4, 2007, was signed by the four council members who did not sign the first letter plus one council member who signed both letters. These letters clearly convey the point that one of LFUCG’s over-arching concerns is that the water supply solution should be cost-effective for ratepayers. Both letters also remind the Commission that it should “carefully analyze. . .any other alternative water supply proposals” and that the

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<sup>2</sup> Id.

Commission should “allow sufficient time to evaluate all options. . . .” However, neither letter nor any statement by LFUCG within the record of this case indicates that it has ever adopted a position on Kentucky-American’s application or upon the reasonableness or cost-effectiveness of the water utility’s proposed solution to its water supply problems.

It is equally unclear whether Kentucky-American has ever considered partnering with LFUCG in some form to combine the low-cost capital available to municipalities for construction of public projects with the technical expertise of an established water utility.<sup>3</sup> Such partnering might be one alternative worthy of consideration.

Similarly, the Commission is uncertain what, if any, discussions Kentucky-American and Louisville Water Company (“LWC”) have had previously regarding the feasibility of a joint plan to serve the water supply needs of Kentucky-American’s and BGWSC’s customers from the Ohio River. Such discussions would indicate the level and completeness of utility management’s review of available options before embarking upon the present course of action.

Recognizing that our decision in this case will affect hundreds of thousands of ratepayers for decades to come, we are committed to making our best judgment based upon a record that contains all available evidence. To satisfy ourselves that no stone has been left unturned, and that all reasonable proposals have been examined, we are propounding additional requests for information to Kentucky-American, LFUCG, LWC, and the BGWSC. To ensure a thorough and complete discussion of all issues that

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<sup>3</sup> See KRS Chapter 58 (providing for the acquisition and development of public projects through negotiable revenue bonds).

Kentucky-American's application presents, we have further developed a list of issues that we expect all parties to address in their written briefs.

Our action will require modest revisions to the existing procedural schedule. To ensure adequate time for comprehensive responses to the post-hearing requests for information, and to permit all parties the opportunity to review these responses and address them in their written briefs, we have extended the time for submission of written briefs by 19 days. This additional time should not significantly delay the entry of a final Order in this proceeding or otherwise adversely affect the interest of any party.

IT IS THEREFORE ORDERED that:

1. No later than January 9, 2008, Kentucky-American shall file with the Commission an original and 8 copies of the information listed in Appendix A to this Order.
2. No later than January 9, 2008, LFUCG shall file with the Commission an original and 8 copies of the information listed in Appendix B to this Order.
3. No later than January 9, 2008, LWC shall file with the Commission an original and 8 copies of the information listed in Appendix C to this Order.
4. No later than January 9, 2008, BGWSC shall file with the Commission an original and 8 copies of the information listed in Appendix D to this Order.
5. a. Each party's responses to requests for information shall be appropriately bound, tabbed and indexed and shall include the name of the witness responsible for responding to the questions related to the information provided.

b. Each party's responses shall be answered under oath or, for representatives of a public or private corporation or a partnership or association or a governmental agency, be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

c. Each party shall give careful attention to copied material to ensure its legibility. When the requested information has been previously provided in this proceeding in the requested format, reference may be made to the specific location of that information in responding to this request.

d. For any requests to which a party fails or refuses to furnish all or part of the requested information, that party shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

6. No later than January 16, 2008, each party shall file with the Commission a written brief in this matter. These briefs shall, at a minimum, address the issues set forth in Appendix E to this Order.

7. The Executive Director shall accept written comments from the public on this matter until this proceeding stands submitted for decision.

8. The record of this proceeding shall stand submitted for decision at the close of business on January 16, 2008.

Done at Frankfort, Kentucky, this 21st day of December, 2007.

By the Commission

Commission Clark Abstains.

ATTEST:

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

Executive Director

## APPENDIX A

### APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2007-00134 DATED December 21, 2007

1. Identify each alternative to the construction of the facility proposed in Kentucky-American's application that Kentucky-American has considered within the past 5 years. For each such alternative, provide:
  - a. A brief description of the alternative.
  - b. The names and positions of the persons who identified or proposed the alternative.
  - c. The time period in which Kentucky-American considered the alternative.
  - d. The name and position of the person(s) who evaluated the alternative on Kentucky-American's behalf.
  - e. The name and position of any non-Kentucky-American or American Water Works Company personnel who evaluated the alternative.
  - f. The best estimation of the cost of the alternative over a 30-year period as a present day value.
  - g. The best estimation of the rate impact of the alternative.
  - h. The best estimation of the time period for completing construction of the alternative.
  - i. A narrative of the findings and conclusions of the person(s) identified in subparagraphs (d) and (e) above as having evaluated the alternative which includes the basis for not pursuing the alternative.

2. Describe how circumstances have changed, if at all, from the time Kentucky-American decided not to pursue the construction of a water transmission pipeline to interconnect with LWC in the 1990s.

3. Provide in narrative form, together with any relevant documents, a summary of all contacts with LFUCG regarding the future supply of water to Kentucky-American's customers, including any and all discussion of any public-private partnership involving LFUCG to construct a new water treatment facility on the Kentucky River including the construction of mains sufficient to transmit such water to Kentucky-American's system.

4. Provide in narrative form, together with any relevant documents, a summary of all contacts with LWC regarding the future supply of water to KAWC's customers, including any and all discussions of any public-private partnership involving LWC to provide such supply of water.

5. List and describe all public-private joint ventures involving the delivery of water or sewage services to the public in which Kentucky-American has engaged in the last 20 years.

6. List and describe all public-private joint ventures involving the delivery of water or sewage services to the public that affiliates of the American Water Works Company have engaged in the last 20 years.

7. Provide a copy of all documents received by Kentucky-American in conjunction with its request for bids for construction of the facilities identified in Kentucky-American's application.

8. Refer to Kentucky-American's rebuttal testimony of Harold Walker, III, dated November 13, 2007, Schedule 1. Provide a revised and updated Schedule 1 that reflects the accepted bids on the proposed facilities.

9. Refer to Kentucky-American's rebuttal testimony of Harold Walker, III, dated November 13, 2007, Schedule 1 and to the Kentucky-American Intermediate Bid Evaluation for Kentucky River Pool 3 Project Phase 1 (20 MGD) and Phase 2 (5 MGD), dated December 19, 2007. Reconcile the Intermediate Bid Evaluation with the Column A of Schedule 1.

## APPENDIX B

### APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2007-00134 DATED December 21, 2007

1. Provide in narrative form, together with any relevant documents, a summary of any and all contacts with Kentucky-American regarding the future supply of water to Kentucky-American's customers, including any and all discussion of any public-private partnership involving LFUCG to construct a new water treatment facility on the Kentucky River.

2. State whether any calculations have been made by LFUCG, or at LFUCG's request, which would show the cost of constructing a new water treatment facility on the Kentucky River including the construction of mains sufficient to transmit such water to Kentucky-American's system.

3. If such calculations referred to in Item No. 2 have been made, provide such calculations in a reasonably understandable format.

4. Provide all internal memoranda in which LFUCG officials discuss meetings or communications with Kentucky-American regarding possible solutions to Kentucky-American's water supply needs, including the construction of a new water treatment facility and water transmission mains.

5. a. State whether LFUCG has considered entering into a public-private venture with Kentucky-American to construct facilities necessary to expand Kentucky-American's existing water supply.

b. If yes, describe each option considered, the actions that LFUCG took to pursue the option, and the result of these actions.

c. If not, explain why such options have not been considered.

## APPENDIX C

### APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2007-00134 DATED December 21, 2007

1. Provide in narrative form a summary of any and all contacts with Kentucky-American regarding the future supply of water to Kentucky-American customers.
2. Provide all correspondence and electronic mail messages with Kentucky-American officials regarding possible solutions to Kentucky-American's water supply needs, including the construction of a new water treatment facility and water transmission mains.

## APPENDIX D

### APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2007-00134 DATED December 21, 2007

1. Identify each alternative to the construction of the facility proposed in Kentucky-American's application that BGWSC has considered within the past 5 years.

For each such alternative, provide:

- a. A brief description of the alternative.
- b. The names and positions of the persons who identified or proposed the alternative.
- c. The time period in which BGWSC considered the alternative.
- d. The name and position of the person(s) who evaluated the alternative on BGWSC's behalf.
- e. The name and position of any non-BGWSC personnel who evaluated the alternative.
- f. The best estimation of the cost of the alternative over a 30-year period as a present day value.
- g. The best estimation of the rate impact of the alternative.
- h. The best estimation of the time period for completing construction of the alternative.
- i. A narrative of the findings and conclusions of the person(s) identified in subparagraphs (d) and (e) above as having evaluated the alternative which includes the basis for not pursuing the alternative.

2. Provide in narrative form, together with any relevant documents, a summary of all contacts with Kentucky-American regarding the future supply of water to

BGWSC and Kentucky-American's customers that involved joint ownership or a public-private partnership of a new water treatment facility on the Kentucky River including the construction of mains sufficient to transmit such water to Kentucky-American's system or the construction of a transmission main from LWC facilities to Kentucky-American and BGWSC members.

3. Provide in narrative form, together with any relevant documents, a summary of all contacts with LWC regarding the future supply of water to BGWSC and Kentucky-American's customers, including any and all discussions of any joint public-private partnership involving LWC or others to provide such supply of water.

## APPENDIX E

### APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2007-00134 DATED December 21, 2007

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

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

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

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

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