

RECEIVED

SEP 30 2009

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of :

TARIFF FILING OF KENTUCKY-AMERICAN)
WATER COMPANY TO REVISE THE) Case No.
KENTUCKY RIVER AUTHORITY) 2009-00124
WITHDRAWAL FEE)

MEMORANDUM
OF THE
CITY OF LAWRENCEBURG

Comes now the City of Lawrenceburg, by and through Counsel, pursuant to the Order of the Public Service Commission entered in this matter on September 3, 2009 and tenders the following memorandum, to wit:

In its Order entered August 18, 2009 the Public Service Commission extended the opportunity for any “party to this case” to file “a written memorandum” on three specified issues. These issues will be addressed in the order presented.

Response to Question “a”

As with many issues of law, the question posed by the PSC in Paragraph 3 (a) of the above mentioned Order turns on the interpretation of specific words and language. When considering if KRA assessments can and should be considered a part of the “normal costs of providing water service,” one must initially determine what constitutes “normal costs.” As set forth in PSC Case No. 2009-00056, the City of Lawrenceburg presented over twenty expenses that are considered “normal costs” and are utilized in the calculation of the water rate.

Included in these “normal costs” are such items as salaries, repair and maintenance, uniforms and chemicals. Each of the listed expenses is one that is incurred by the City of

Lawrenceburg in its production of water. Similarly, the KRA assessment is an expense that can be seen as being incurred in the City's production of water. If then the sole criteria for "normal cost" is that it is incurred in the process of water production, the answer to the PSC's query is self evident.

However, a closer examination of those expenses which are agreed by all to be "normal costs," shows a decided and determinative difference between those expenses and the KRA assessment. Each of the "normal costs", salaries, repairs, etc., is to a greater or lesser degree subject to the pressures of the open market. Salaries are established by the City at a rate which is competitive with other industries and which is meant to ensure the retention of quality personnel. Repair costs can be controlled by aggressive maintenance and proper care of equipment. Chemicals needed to produce water for customer consumption can be bid and obtained at the lowest possible cost. While chemical providers are free to set their prices as they please, the City is in turn free to negotiate with multiple suppliers and seek the best value. Each "normal expense" from office supplies to insurance can be obtained from a variety of suppliers, thereby giving the purchaser the ability to seek the best price and hold down costs. It is clear that each of these "normal expenses" shares the attribute that it is subject to market pressure and is one that the City of Lawrenceburg, through its free market purchase power, has the direct ability to influence.

Unlike the "normal expenses" mentioned above, the City of Lawrenceburg does not have the ability to "shop around" for its raw water supply. Geography and fiscal realities dictate that the City will receive its water only from the Kentucky River and therefore through the KRA. Restricted as it is to its supplier, the City of Lawrenceburg additionally has no ability to negotiate the KRA water use fees. The statutes and administrative regulations which ultimately determine

water use fees are well beyond the City's practical ability to influence. Simply put, the KRA holds a monopoly on a product without which the City cannot survive. The KRA sets its fees and the City has no option but to pay.

Given the realities of the situation faced by the City of Lawrenceburg and others, the KRA withdrawal assessment can in no wise be considered as a "normal cost." The establishment of the KRA fee is not subject to any practical pressure or influence by the City. Normal steps to control waste and improve productivity likewise will not reduce the fee or the City's utter dependence on the KRA. The City must have water, and the piper must be paid.

Response to Question "b"

For the reasons set forth in the Response to Question "a" above, the KRA assessment can only be seen as an "extraordinary expense." As such, it is not only appropriate, but necessary that it be recovered through "a separate line item on customer bills." The water service customers of the City of Lawrenceburg can, and often do, apply direct pressure on their elected officials. Far from a complaint, this is the proper function of our system of government. When water rates paid by our customers rise, there is an equal rise in the customer's political interest. While the City cannot directly influence the KRA, the citizens can and most assuredly do influence the City.

Similarly, citizens can and do influence the legislature and the governmental agencies which establish the KRA fees. With the KRA fee listed as a separate line item, information is immediately available to every customer as to who is responsible for the increase in their water bill. By mingling the KRA assessment in with the "normal costs" and ultimately the normal

water rate, the citizens are misled into believing that every increase imposed by the KRA, is actually to be laid at the feet of the City.

In that the KRA fee is one over which the City has no control and cannot be considered a normal expense, it is disingenuous at best to hide the fee inside the City's water rate. The City, which has no influence over the KRA, bears full blame for the rate increase and the citizen's political pressure is directed away from the responsible party. This scenario creates a clear "win-win" for the KRA. The KRA increases the water bill, and the citizen believes the City is to blame. This is wholly inappropriate and violates every precept of democratic governance.

Paragraph "b" of the PSC's August 18, 2009 Order additionally poses the question as to whether the "methodology" applied by the City in passing through the KRA fee should "ensure total recovery of fees." The answer to this question seems obvious. If the City cannot fully recover those fees which are directly attributable to the KRA within a separate line item, then the City will have no option but to recover the deficit by an increase in the general water rate. The City is once again in the unenviable position of appearing to be the party responsible for an increase in water rates and the political pressure of the public is once again misdirected.

The true issue raised by the PSC does not appear to be whether the KRA fees should be fully recovered. Rather, the question is whether a methodology should be utilized by KRA customers which goes beyond "full recovery." It is clear that the citizens are going to pay, regardless of the methodology. The issue then, is whether the methodology used by KRA customers appropriately ensures "full recovery", or whether that methodology is such that it is nothing more than a vehicle to generate hidden profit. To use the PSC's term, does the methodology provide for over-recoveries?

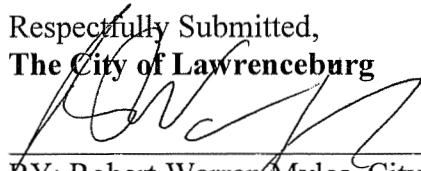
It is the position of the City of Lawrenceburg, that the methodology utilized by the customers of the KRA, should ensure full recovery, but should not create over-recovery. “Over-recoveries” are nothing more than hidden rate hikes. Just as it is inappropriate for the KRA to hide its rate hikes in the general water rate of its customer, it is inappropriate for KRA customers to hide their rate hikes in the guise of “over-recoveries.”

Response to Question “c”

The final question posed by the PSC in its August 18, 2009 order deals with “full-recovery” and its impact on “line loss.” The argument appears to be that “full-recovery” eliminates the incentive to reduce the amount of “unaccounted-for water.” In other words, so long as KRA customers can recover all of their KRA fees, they will not repair their lines and stop line-loss. From the perspective of the City of Lawrenceburg, these issues are not related. The City, through its methodology, seeks to insure “full-recovery” of the KRA fees and as discussed above, does not use the methodology as a back-door rate increase.

On a practical level, the City of Lawrenceburg has approximately 153 miles of water distribution lines. Additionally, the City has approximately one mile of intake, pre-treated water line. It is obvious that the volume of water loss in the intake, pre-treated line is miniscule when compared to the loss in the post-treated distribution lines. A methodology which allows for full recovery of the KRA fee, in no way defrays the cost incurred by the City of treating the water which is lost in the distribution lines. In order for a “full-recovery” methodology to be an impediment to “implementing practices to reduce the volume of unaccounted for water”, the methodology would have to include the cost per gallon of treating the water. While that may or may not be the practice of other KRA customers, it is not the practice of the City of Lawrenceburg.

Respectfully Submitted,
The City of Lawrenceburg



BY: Robert Warren Myles, City Attorney
100 North Main Street
Lawrenceburg, Kentucky 40342

CERTIFICATE OF SERVICE

This is to certify that an original and ten (10) photocopies of this Motion to Intervene were served, filed and hand delivered to Mr. Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Blvd. Frankfort, Kentucky 40601 and that a true and accurate copy of this Motion was mailed, first class postage prepaid, to the following:


Hon. Lindsey W. Ingram, III
Stoll Keenon Ogden PLLC
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507-1801

Hon. David E. Spenard
Utility and Rate Intervention Division
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601-8204

Hon. Hance Price
Attorney for the Frankfort Plant Board
317 West Second Street
Frankfort, Kentucky 40601

Hon. Jack B. Bates
Attorney for KMUA
415 West Main Street, Suite 2
Frankfort, Kentucky 40601

all on this the 30st day of September, 2009.



Robert Warren Myles
City Attorney
City of Lawrenceburg