

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

TARIFF FILING OF KENTUCKY-AMERICAN)
WATER COMPANY TO REVISE THE) CASE NO. 2006-00154
KENTUCKY RIVER AUTHORITY WITHDRAWAL)
FEE)

ORDER

Kentucky-American Water Company (“Kentucky-American”) proposes to revise its tariff regarding the Kentucky River Authority (“KRA”) withdrawal fee to reduce the fee from \$0.04148 per 100 cubic feet of water to \$0.00085 per 100 cubic feet of water. Having reviewed the proposed revision, the Commission approves the proposed revision but directs changes in the fee’s calculation and reporting of the fee’s collections.¹

Recognizing that the locks and dams on the Kentucky River were critical to providing a source of clean water for several hundred thousand persons in central Kentucky, the Kentucky General Assembly in 1986 authorized the KRA to assume responsibility from the U.S. Army Corps of Engineers for these locks and dams.²

¹ On April 12, 2006, Kentucky-American filed its proposed revision with the Commission. After establishing this proceeding to investigate the reasonableness and lawfulness of the proposed revision, the Commission granted the motions of the Attorney General and Lexington-Fayette Urban County Government to intervene. Neither party actively participated in this proceeding. The Commission, on its own motion and through its Staff, conducted discovery. In the absence of any request for a hearing or additional discovery, the Commission finds that this matter is ready for decision.

² KRS 151.700.

Subsequently, it authorized the KRA to “collect water use fees from all facilities using water from the Kentucky River basin.”³ On December 17, 1993, KRA promulgated administrative regulations that established fees for the withdrawal of surface water and groundwater from the Kentucky River basin.⁴

In anticipation of KRA’s assessment of water use fees, Kentucky-American in Case No. 1992-00452⁵ proposed revisions to its tariff to permit the billing, as a separate item, an amount equal to the proportionate part of any KRA fees or charges. The Commission approved the proposed revision.

In Case No. 1994-00194,⁶ the Commission approved a methodology based upon estimated water withdrawals from the Kentucky River and estimated water sales. Under this methodology, Kentucky-American estimates its total payment of KRA user fees using projected water withdrawals for the upcoming calendar year. It then divides this total by its projected net water sales for the current calendar year to produce a KRA Withdrawal Fee rate for the current calendar year. Should the KRA Withdrawal rate

³ KRS 151.720.

⁴ See 420 KAR 1:040 (establishing Tier I fee); 420 KAR 1:050 (establishing Tier II fee). KRA assesses 2 user fees. Tier I fees are assessed on all persons who use the surface water or groundwater of the Kentucky River basin and are intended to fund watershed management projects that benefit the entire Kentucky River basin watershed and the KRA’s general expenses. Tier II fees are intended to fund only projects that benefit a certain part of the Kentucky River basin and are assessed only to those persons who use the surface water or groundwater of the Kentucky River basin and derive a benefit from those projects.

⁵ Case No. 1992-00452, Notice of Adjustment of The Rates of Kentucky-American Water Company (Ky. PSC Nov. 19, 1993) at 49.

⁶ Case No. 1994-00194, The Proposed Tariff of Kentucky-American Water Company (Ky. PSC June 9, 1994).

produce total revenues that are insufficient or in excess of the amount of Kentucky-American's payment to KRA, then this over- or under-recovery of revenues would be addressed in Kentucky-American's next general rate proceeding.

In Case No. 2000-00120,⁷ the Commission, at Kentucky-American's request, made further modifications to the KRA Withdrawal Fee. We modified the methodology to calculate the rate to provide for the under- or over-recovery of revenues.⁸ We further dispensed with customer notice of the proposed revisions to the fee, but directed Kentucky-American to publish the proposed fee revisions and the manner in which they were collected on its Internet Web site. We also directed Kentucky-American to include with any tariff revision filing, a statement showing how the revised fee was calculated.

Since our approval of Kentucky-American's last proposed revision of its KRA Withdrawal fee in November 2000, Kentucky-American has assessed the fee without revision. While it had thrice revised its KRA Withdrawal Fee in the period between 1993 and 2000, it made no revisions to the fee in the 5 years following the last revision.

During the period from 2002 to 2005, Kentucky-American billed \$2,845,685.38 for KRA Withdrawal Fee but paid only \$2,343,691.80 for water user fees. As the table below indicates, Kentucky-American experienced a significant over-recovery of

⁷ Case No. 2000-00120, Application of Kentucky-American Water Company to Increase Its Rates (Ky. PSC Nov. 27, 2000) at 36-37.

⁸ Under this revision, Kentucky-American would deduct any over-recovery or add any under-recovery to its estimate of KRA user fees for the current calendar year. It then divides this amount by its projected net water sales for the current calendar year to produce a KRA Withdrawal Fee rate for the current calendar year. For an illustration of this methodology, see Kentucky-American's Response to the Commission's Order of May 1, 2006, Item 1.

revenue. Kentucky-American reports that, as of December 31, 2005, it had a total liability of \$599,608 related to the KRA Withdrawal Fee.⁹

TABLE I				
Year	KRA Fee Billed to Kentucky-American	KRA Withdrawal Fee Billed	Amount Over-Recovered	Over-Recovery (%)
2002	\$609,864.55	\$ 720,127.03	\$110,262.48	18.1
2003	590,000.14	693,170.40	103,170.26	17.5
2004	570,690.28	688,075.76	117,385.48	20.6
2005	573,136.83	744,890.19	171,753.36	29.8
Total	\$2,343,691.80	\$2,846,263.38	\$502,571.58	17.7
<i>Source:</i> Kentucky-American's Response to the Commission's Order of May 1, 2006, Item 6.				

The amount of this over-recovery clearly indicates that Kentucky-American failed to recalculate the KRA Withdrawal Fee annually to reflect over-recoveries. While recognizing that Kentucky-American's tariff did not require recalculation or adjustment "if the over or under collection is immaterial,"¹⁰ the magnitude of these over-recoveries was great enough to require at least 4 adjustments since 2001.¹¹ Kentucky-American's failure to make these adjustments strongly suggests the need for greater supervision of its assessment and collection of the KRA Withdrawal Fee. The Commission finds that annual filings and adjustments should be mandatory regardless of the amount of the

⁹ Kentucky-American's Response to the Commission's Order of May 1, 2006, Item 1.

¹⁰ Kentucky-American Tariff, P.S.C. KY No. 6, Fifth Revised Sheet No. 55.1. The tariff does not define "immaterial." Kentucky-American states that the intent of the tariff was "to let small variances in collections related to estimated sales and withdrawals (basis for fees) subject to fluctuations related to weather or customer usage patterns self-correct." Kentucky-American's Response to Commission Staff's Interrogatories and Requests for Production of Documents, Item 10.

¹¹ Kentucky-American concedes that adjustments were required for at least 3 of these years. See Kentucky-American's Response to Commission Staff's Interrogatories and Requests for Production of Documents, Item 11.

over- or under-recovery. We further find that the proposed tariff sheet's references to immaterial "over- or under-collection" should be stricken.

The Commission notes that Kentucky-American failed to comply with the provisions of our Order of November 27, 2000 in Case No. 2001-00120. We directed in that Order that the water utility file with "any tariff revision filings . . . a statement showing how the revised fee was calculated"¹² and "publish the proposed fee and the manner in which it was calculated on its Internet Web site."¹³ Kentucky-American did not file such statement with its proposed tariff revision and submitted such statement only after we requested it.¹⁴ Similarly, the water utility did not publish the required documents on its Internet Web site until well after its filing with the Commission.¹⁵ In light of these failures, the Commission finds that Kentucky-American should be required to use more traditional methods of notice for any future tariff revision involving the KRA Withdrawal Fee and to file more detailed reports of its calculations.

After reviewing the history of the KRA Withdrawal Fee and the relatively stable level of the KRA water user fees,¹⁶ we seriously question the need for a separate line item to recover KRA water user fees and why recovery of such fees cannot be

¹² Case No. 2000-00120, Order of November 27, 2000 at 37.

¹³ Id.

¹⁴ Commission's Order of May 1, 2006, Appendix A.

¹⁵ Kentucky-American's Response to the Commission's Order of May 1, 2006, Item 5.

¹⁶ KRA has not changed its Tier I or Tier II fees since December 17, 1993.

recovered through general rates. We place Kentucky-American on notice that this issue will be considered in Kentucky-American's next general rate adjustment case.

Having reviewed the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. Kentucky-American's proposed adjustment is reasonable and should be approved.

2. Excepted as noted in Finding Paragraph 3, Proposed Kentucky-American Tariff, P.S.C. KY No. 6, Sixth Revised Sheet No. 55.1 should be approved.

3. The last sentence of Proposed Kentucky-American Tariff, P.S.C. KY No. 6, Sixth Revised Sheet No. 55.1, which reads "[n]o adjustment will be made if the over or under collection is immaterial," should be stricken.

IT IS THEREFORE ORDERED that:

1. Effective the date of this Order, Kentucky-American is authorized to charge a rate of \$.00113 per 1,000 gallons or \$.00085 per 100 cubic feet of water under Service Classification No. 6 Tariff for KRA Withdrawal Fee.

2. Kentucky-American shall maintain a record of its collections under Service Classification No. 6 Tariff for KRA Withdrawal Fees.

3. Except as noted in Ordering Paragraph 4 of this Order, Kentucky-American's proposed tariff revision is approved.

4. The last sentence of Proposed Kentucky-American Tariff, P.S.C. KY No. 6, Sixth Revised Sheet No. 55.1, which reads "[n]o adjustment will be made if the over or under collection is immaterial," is stricken.

5. On March 31, 2008, and each year thereafter, Kentucky American shall adjust the KRA Withdrawal Fee to reflect any over- or under-collection of Kentucky River Authority fees existing at the time of the adjustment regardless of the size of the over or under collection.

6. When making the adjustment required by Ordering Paragraph 5 of this Order, Kentucky-American shall file with the Commission a written report that includes:

- a. Total Withdrawal Fees paid to KRA for the previous calendar year;
- b. Total amount of water withdrawn from the Kentucky River during the previous calendar year;
- c. Total revenues billed under Service Classification No. 6 Tariff for KRA Withdrawal Fee for the previous calendar year;
- d. Total revenues collected under Service Classification No. 6 Tariff for KRA Withdrawal Fee for the previous calendar year;
- e. Total water sales for previous calendar year;
- f. Estimated amount of water withdrawn from the Kentucky River for the current year;
- f. Estimated amount of Withdrawal Fees to be paid to KRA in the current calendar year;
- g. All assumptions and calculations upon which Kentucky-American's estimates are based;
- h. Each "Water Discharge Reporting Withdrawal Form" that Kentucky-American submitted to KRA for the previous calendar year.

7. When making the annual adjustment of the KRA Withdrawal Fee as Ordering Paragraph 5 requires, Kentucky-American shall comply with the provisions of KRS 278.180 and shall notify the public of its proposed adjustment in accordance with 807 KAR 5:011, Section 8(2) and (3).

8. Within 20 days of the date of this Order, Kentucky-American shall file a revised tariff sheet that sets forth the rate authorized herein and that is consistent with the provisions of this Order.

Done at Frankfort, Kentucky, this 12th day of February, 2007.

By the Commission

ATTEST:


Executive Director