

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

Kentucky-American Water Company (“Kentucky-American”) has moved for an Order compelling Louisville Water Company (“LWC”) to correct alleged deficiencies in its responses to Kentucky-American’s first set of discovery requests. LWC has submitted a response to the motion in which it, *inter alia*, supplements its initial response to Kentucky-American’s discovery requests. Having considered the motion and the responses thereto,<sup>1</sup> we grant the motion in part and deny in part.

On August 13, 2007, Kentucky-American served discovery requests upon LWC in accordance with the existing procedural schedule in this proceeding. On October 1, 2007, LWC responded to these requests. Asserting that these responses “are “inadequate, pose inappropriate objections, and flout both the Commission’s stated rules of procedure for discovery responses in this case and the Commission’s regulations pertaining to discovery responses,”<sup>2</sup> Kentucky-American on

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<sup>1</sup> In addition to LWC, the Attorney General and Lexington-Fayette Urban County Government responded to Kentucky-American’s Motion.

<sup>2</sup> Motion at 1.

October 11, 2007, moved for an Order requiring LWC's immediate correction of these alleged deficiencies. On October 16, 2007, LWC submitted its response to this motion.

The Commission will not address each alleged deficiency in LWC's initial response in this Order. A summary of Kentucky-American's allegations and LWC's response is shown in Table I to this Order. The Commission notes that LWC's Response has effectively cured many of the deficiencies that Kentucky-American listed in its Motion. We limit discussion to certain issues of significant importance.

First, Kentucky-American notes LWC's failure to provide a paper copy of all requested documents. In lieu of a paper copy, LWC submitted a CD-ROM that contained an electronic version of the requested documents. Kentucky-American suggests that this action effectively shifted the cost of producing the documents to the requesting party. It requests reimbursement in the amount of the \$991.29 for reproducing these documents.

LWC responds that the discovery request required production of true and accurate copies of responsive documents and that such copies were provided in electronic format. It further states that its action is consistent with its right to control the cost of litigation and is not unreasonable.

Our review of the existing procedural orders does not reveal a preference to the medium in which discovery documents should be provided. The Commission's general practice, however, has been to require the production of a paper copy unless the Commission directs otherwise or the parties agree to an alternate medium. No agreement for the use of electronic documents exists in this proceeding. LWC should have provided each party and the Commission a paper copy of the discovery documents.

The Commission lacks the authority to assess costs and accordingly cannot grant the relief that Kentucky-American requests.<sup>3</sup> We, however, direct LWC to file with the Commission two paper copies of the discovery documents located on the CD-ROM and to provide a paper copy to any party to this proceeding that makes written request for such copy. In the future, we expect all parties to submit paper copies of discovery documents unless the Commission directs otherwise or they reach agreement on the proper medium.

Kentucky-American seeks a response to Request 46 in which it sought the status and schedule for all projects recommended in LWC's 2002-2021 Facilities and the cost of each project. LWC argues that the request is unduly burdensome since it involves all LWC projects regardless of the project's cost and potentially could involve several construction projects.

We find that LWC's objection to producing the documents should be overruled, but that the production of documents should be limited. We agree with Kentucky-American's position that the documents may reasonably be used to assess LWC's proposal and ability to timely complete the construction that its proposal requires. However, producing a listing of all projects and their production schedules, even for the smallest of projects, is excessive and unduly burdensome. LWC instead should provide the information requested in Request 46 for each project recommended in the 2002-2021 Facilities Plan that has a projected or actual cost that is \$5,000,000 or greater.

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<sup>3</sup> Assuming the Commission possessed the authority to assess costs, we fail to understand Kentucky-American's position that it is entitled to the cost of reproducing 2 copies of the discovery documents. LWC was not required to furnish 2 copies of any discovery documents to any of the parties.

LWC should also provide the requested information in a summary form for all projects in the 2002-2021 Facilities Plan regardless of projected or actual cost.

Kentucky-American also requests a copy of LWC's most recent cost-of-service study in electronic format with formulae intact to permit Kentucky-American to determine the rate effect of LWC's proposals on LWC customers. While providing an electronic copy without electronic formulae, LWC refuses on grounds of relevance to provide the formulae. It asserts that LWC's retail rates are not within the Commission's jurisdiction and therefore not relevant to this proceeding. While LWC's retail rates are not relevant, construction of the proposed Louisville Pipeline might have some effects on LWC's retail operations, which in turn could conceivably affect LWC's wholesale pricing decisions. Accordingly, we find that Kentucky-American's request is reasonable and the requested information should be produced. We note that, should LWC consider this information as confidential or proprietary, it may seek confidential treatment of its response.

Finally, Kentucky-American has sought production of all documents related to any negotiations between Kentucky-American and LWC for water service since January 1, 1994. Contending the request is unduly burdensome, LWC has objected to the production of these documents. Based upon our review of the pleadings, we find that the request may lead to information regarding the cost and viability of the LWC pipeline proposal and that the information should be produced. We note that LWC is not required to produce documents that are already in the record, but must produce any documents that comply with the request but have not previously been placed in the record of this proceeding.

IT IS THEREFORE ORDERED that:

1. Kentucky-American's Motion to Compel Adequate Discovery Responses as it relates to Requests 14, 17, 19, 24, 34, 42(b), 43, 61, 63, 79, 80, 85, 89, and 121 is denied.

2. Kentucky-American's Motion to Compel Adequate Discovery Responses as it relates to Request 15 is granted. LWC shall provide, no later than October 29, 2007, to Kentucky-American all internal documents, including electronic communications, related to LWC communications with elected officials outside of Jefferson County for the last 5 years.

3. Kentucky-American's Motion to Compel Adequate Discovery Responses as it relates to Request 27 is granted. LWC shall, no later than October 29, 2007, respond to this request, provide all documents related to the recruitment of industrial customers, and state the date of all contacts or presentations made to potential customers.

4. Kentucky-American's Motion to Compel Adequate Discovery Responses as it relates to Request 46 is granted. LWC shall provide the information requested in Request 46 for each project recommended in the 2002-2021 Facilities Plan that has a projected or actual cost that is \$5,000,000 or greater. LWC shall provide the requested information in a summary form for all projects in the 2002-2021 Facilities Plan regardless of projected or actual cost.

5. Kentucky-American's Motion to Compel Adequate Discovery Responses as it relates to Request 53 is granted. LWC shall, no later than October 29, 2007, provide to Kentucky-American an electronic version of its most recent cost-of-service study (in Excel or comparable format) with formulae intact.

6. Kentucky-American's Motion to Compel Adequate Discovery Responses as it relates to Request 68 is granted. LWC shall, no later than October 29, 2007, provide to Kentucky-American all internal documents in which the use of the Interstate Highway 64 right-of-way/controlled access for a longitudinal installation of a water pipeline is discussed.

7. Kentucky-American's Motion to Compel Adequate Discovery Responses as it relates to Request 117 is granted. LWC shall provide all documents that are related to any negotiations between Kentucky-American and LWC since January 1, 1994 regarding Kentucky-American's purchase of water or water-related services from LWC and that have not been previously filed in the record of this proceeding.

8. Kentucky-American's Motion to Compel Adequate Discovery Responses as it relates to the assessment of costs against LWC for the reproduction of certain discovery responses is denied.

9. No later than November 9, 2007, LWC shall furnish to the Commission two paper copies of the documents contained in the CD-ROM that it filed with the Commission on October 1, 2007.

10. LWC shall furnish to any party to this proceeding that makes written request to LWC a paper copy of the documents contained in the CD-ROM that it filed with the Commission on October 1, 2007.

11. Any portion of Kentucky-American's Motion to Compel Adequate Discovery Responses that is not expressly addressed in this Order is denied.

Done at Frankfort, Kentucky, this 24<sup>th</sup> day of October, 2007.

By the Commission

Commissioner Clark Abstains

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

Executive Director

**TABLE I**

<b>Request</b>	<b>Kentucky-American's Position</b>	<b>Louisville Water Company Response</b>
14	Request sought all minutes of LWC Board of Directors and LWC Executive Leadership Team meeting from 1999 to present. The minutes of 8/15/2006 meeting is missing.	A copy of missing minutes is attached to LWC's Response to Motion to Compel.
15	Request sought all documents related to LWC communications with elected officials outside Jefferson County. LWC states it "regularly communicates" with members of the state legislature. Only 2 documents are provided. All documents include electronic correspondence.	Most communication with officials occurs orally. LWC will review internal documents and submit NLT 10/29/2007 all internal documents related to LWC communications with elected officials outside Jefferson County.
17	Request sought reconciliation of the differences in LWC's two demand studies. LWC response was non-responsive. LWC stated that differences were "likely attributable to difference in the data sets and methodologies used" by LWC's consultants. No effort made to obtain reasons from its consultants.	LWC did not prepare the studies. Reconciliation should come directly from the sources of the reports.
19	Request sought the rationale, basis and research used for predicting declining industrial sales in LWC's 20-Year Forecast. LWC responded by referring to page 2 of Forecast which only broadly describes when the data were collected and provides some discussion of seasonal trends. Response is non-responsive.	LWC 's response is based upon the Cerrito report. LWC did not prepare the report. The third party must explain the response.
24	Request sought LWC's maximum monthly demand by customer class. LWC states that it does not track maximum demand by customer class. In response to Request 134, LWC did provide annual water use by customer class as a percentage of overall use. Response to Request 134 is evidence that it can provide monthly usage information. Response is non-responsive.	A copy of actual consumption by customer class for each month for the period 2001-2006 is attached to LWC's Response.
27	Request asked whether LWC has made presentations to existing industries who do not receive water from LWC in an effort to secure those industries for future connection. LWC's response is that it serves customers, not industries. Response is non-responsive.	LWC did not understand the term "industries" to mean industrial customers. It will now review its records and provide any information from the prior three years regarding the recruitment of new industrial customers.
34	Request sought total project cost of the LWC riverbank filtration project and how the cost would be applied to current and future ratepayers. LWC failed to provide how the cost would be applied to ratepayers.	LWC's response to question is contained in its Responses to Requests 33 and 35.
42b	Request sought the percentage of "unaccounted for water" that LWC uses for future demand forecast. LWC objected that "unaccounted for water" is vague. The term is defined in PSC regulations. Objection should be overruled.	LWC's objection was an editing oversight. The annual unmetered water percentages for period 2001-2006 in LWC's response.
43	Request sought identification of projects and total project cost for each project to alleviate LWC's <i>projected</i> production shortfall and how those costs would be applied to current and future ratepayers. LWC responded it does not have a current production shortfall. Response is non-responsive.	LWC states that no future production shortfall will exist.



46	Request sought the status and schedule for all projects recommended in LWC's 2002-2021 Facilities Plan and the cost of each project. LWC objected on the grounds that request is unduly burdensome and will not lead to the discovery of admissible evidence. Kentucky-American asserts information is necessary to properly assess LWC's proposal. Any assessment requires LWC's historical, current, and anticipated projects and LWC's ability to complete those projects timely. Objection should be overruled.	Kentucky-American did not limit its request to projects of a certain magnitude/cost. Unrestricted request is unduly burdensome as LWC undertakes hundreds of projects each year.
53	Requested LWC's cost-of-service study in electronic format with formulae intact to permit determination of rate effect on LWC's customers. LWC objected on the grounds that the spreadsheet formulae constitute proprietary information. LWC did not comply with PSC confidentiality procedures.	LWC provided an electronic copy without electronic formulae. Kentucky-American's purported use of formulae to test effect of Louisville Pipeline on LWC's retail rates is not relevant. PSC has no jurisdiction over LWC's retail rates.
61	Requested all project schedules for the tasks that must be performed as part of LWC proposal. LWC refers to responses that are unrelated and unresponsive to the request. No schedule is provided. Response is non-responsive.	LWC has not completed detailed final designs for Louisville Pipeline. Heitzman Rebuttal testimony addresses construction scheduling matter in as great as detail as possible at this time.
63	Requested cost estimate of LWC proposal broken into component costs (e.g., engineering, legal, administration, permitting). LWC referred to other responses that are non-responsive. Response is non-responsive.	The requested information is contained in the R.W. Beck Study.
68	Requested information regarding LWC's ability to use the I-64 right-of-way, including all documents, correspondence detailing the use of I-64 corridor. LWC response: "The Louisville Pipeline proposal includes or considers a route either within or parallel to the I-64 right-of-way." Response is non-responsive. LWC should be compelled to provide the basis or state that there is none.	LWC does not definitely claim that the Louisville Pipeline will be installed in the interstate right-of-way, although other data requests referenced in LWC's response acknowledge that use of the interstate right-of-way could be possible. Access to the interstate highway has not been refused to LWC. LWC's response is therefore responsive. LWC will review internal documents for references to the use of I-64 corridor and supply by 10/29/2007.
79	Requested all hydraulic analyses in paper and electronic format (with formulae intact) for LWC proposal. LWC Response: LWC has not conducted a "detailed" hydraulic analysis. Kentucky-American did not ask for detailed analyses but for all analyses regardless of detail. Response is non-responsive.	LWC has not conducted any hydraulic analysis.
80	Requests the hydraulic grade line used in the hydraulic analysis for Kentucky-American distribution system. LWC Response: LWC has not conducted a "detailed" hydraulic analysis. Kentucky-American did not ask for detailed analyses. LWC refusing to provide the information requested.	LWC has not conducted any hydraulic analysis.
85	Requests all documents relating to LWC Board's approval and/or LWC Executive Leadership Team's approval of LWC proposal. LWC responded that request is unduly burdensome. Response is non-responsive. Response should include all LWC internal e-mails.	No other documents exist. Board of LWC does not act to approve anything via e-mail communications.

89	Requested proposed metering configuration at the Fayette County endpoint of the LWC Pipeline. LWC Response: Final design has not been developed. Kentucky-American contends any metering configurations under consideration should be provided.	LWC has previously referred to 1998 Water Supply Agreement, which addresses potential metering configurations. LWC provides its standard metering configuration with its response to Motion to Compel.
117	Requested all documents related to any negotiations between LWC and Kentucky-American since 1/1/94. LWC contends unduly burdensome and refers to response to PSC Staff Open Records Request. Kentucky-American also requested all LWC internal documents, including e-mails. LWC is refusing to provide these internal documents.	LWC has provided all external documents. No search was made of internal documents. Such documents are irrelevant in light of LWC's current proposal. The burden of searching for such documents outweighs the potential value associated with the production of such documents.
121	Requests the specific termination point of the service for the LWC Proposal. LWC does not provide specific termination point.	LWC has identified the termination point as intersection of Newtown Pike and Ironworks Pike in Fayette County. This information also set forth in Mr. Heitzman's direct and rebuttal testimony