

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|                                 |   |            |
|---------------------------------|---|------------|
| LEXINGTON-FAYETTE               | ) |            |
| URBAN COUNTY GOVERNMENT         | ) |            |
|                                 | ) |            |
| COMPLAINANT                     | ) |            |
|                                 | ) | CASE NO.   |
| V.                              | ) | 2026-00249 |
|                                 | ) |            |
| KENTUCKY-AMERICAN WATER COMPANY | ) |            |
|                                 | ) |            |
| DEFENDANT                       | ) |            |

ORDER

On August 28, 2026, Lexington-Fayette Urban County Government (LFUCG) filed a formal complaint against Kentucky-American Water Company (Kentucky-American).<sup>1</sup> The complaint alleged that Kentucky-American's water-main repair and replacement work in LFUCG rights-of-way had been unreasonable and inadequate, resulting in delays, property damage, and deficient water service.<sup>2</sup> It also raised concerns about costs that might be included in rates and the proposed System Improvement Program (SIP) in Case No. 2026-00094.<sup>3</sup>

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<sup>1</sup> Formal Complaint of Lexington-Fayette Urban County Government (Complaint) (filed Aug. 28, 2026).

<sup>2</sup> Complaint at 3-7.

<sup>3</sup> Complaint at 6-7, and Case No. 2026-00094, *Electronic Application of Kentucky-American Water Company for an Adjustment of Rates, Approval of System Improvement Program, and Tariff Changes*, (filed May 15, 2026).

Kentucky-American filed an answer on September 8, 2026, before issuance of a Commission Order in this matter.<sup>4</sup> Kentucky-American denied that its construction practices were unreasonable or inadequate and asked the Commission to find that the complaint had been satisfied and dismiss it.<sup>5</sup> Having reviewed the complaint, answer, applicable tariff and franchise provisions, and the record, the Commission finds that the complaint, as currently pled, does not conform to 807 KAR 5:001, Section 20(1)(c), and does not establish a *prima facie* case. LFUCG shall have 20 days to amend the Complaint.

### BACKGROUND

LFUCG alleged deficiencies in construction and restoration work in the North Limestone, Fontaine Road, South Upper Street, Bell Court, and Corral Street areas.<sup>6</sup> The alleged practices included inadequate trench backfill and maintenance, delayed temporary and final paving, settling, unsecured steel plates, damage to vehicles and sewer lines, contractor performance, project scheduling, and inadequate communication.<sup>7</sup> LFUCG also alleged that reassessed permit fees had cost Kentucky-American nearly \$270,000 since 2019, including more than \$27,000 in 2026, and that these costs might be borne by customers if allowed in future rates.<sup>8</sup> LFUCG further

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<sup>4</sup> Kentucky-American Water Company's Answer to Lexington-Fayette Urban County Government Complaint (Answer) (filed Sept. 8, 2026).

<sup>5</sup> Answer at 1–2 and 9–10.

<sup>6</sup> Complaint at 5 and Appendix A.

<sup>7</sup> Complaint at 3-5.

<sup>8</sup> Complaint at 6.

asserted that delays in main repairs and replacements negatively affected water purity, pressure, and quantity and might delay reductions in water loss.<sup>9</sup>

LFUCG requested that the Commission require Kentucky-American to adopt written construction and repair policies, disallow specified costs in future rate proceedings, and initiate an investigation that could include a management and operations audit.<sup>10</sup>

In its answer, Kentucky-American stated that two of the five listed projects were complete, two were nearing completion with anticipated completion by September 11, 2026, and work on the Corral Street project was complete pending a final cost-sharing accounting with LFUCG for paving and restoration.<sup>11</sup> Kentucky-American denied that its practices caused inadequate water service or unreasonable rates, and stated that an audit was unwarranted.<sup>12</sup> Kentucky-American requested that the complaint be deemed satisfied.<sup>13</sup>

#### LEGAL STANDARD

KRS 278.260(1) gives the Commission original jurisdiction over complaints concerning a utility's rates or service.

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<sup>9</sup> Complaint at 6.

<sup>10</sup> Complaint at 9.

<sup>11</sup> Answer at 4-8. As of the date of this Order, all stated completion dates in the answer have passed.

<sup>12</sup> Answer at 9-10.

<sup>13</sup> Answer at 10.

Commission regulation 807 KAR 5:001, Section 20(1)(c) states that a complaint must state the act or omission complained of and the facts necessary to describe the alleged failure.

Under 807 KAR 5:001, Section 20(4)(a), the Commission reviews the complaint to determine whether it conforms to the regulation and establishes a prima facie case. The complaint must allege facts which, if uncontroverted, would entitle the complainant to the requested relief. If the complaint is deficient, 807 KAR 5:001, Section 20(4)(a)(1) requires the Commission to notify the complainant and provide an opportunity to amend within a specified time. If the complaint is not timely amended, 807 KAR 5:001, Section 20(4)(a)(2) requires dismissal.

KRS 278.030(2) requires every utility to furnish adequate, efficient, and reasonable service. "Service" includes any practice or requirement relating to a utility's service, including the purity, pressure, and quantity of water as defined by KRS 278.010(13).

Except as to the regulation of utility rates and service, KRS 278.040(8) preserves the police jurisdiction, contract rights, and powers of cities and political subdivisions.

Under 807 KAR 5:001, Section 20(5), the Commission may dismiss a complaint as satisfied only when the defendant's offer of relief has been accepted by the complainant and the Commission approves that disposition. Separately, KRS 278.260(2) permits dismissal without a hearing when a hearing is not necessary in the public interest or to protect substantial rights.

#### DISCUSSION AND FINDINGS

The complaint identified substantial disputes about work in LFUCG rights-of-way, including restoration, paving, traffic control, contractor performance, property damage,

and compliance with LFUCG requirements.<sup>14</sup> The franchise agreement provides LFUCG with rights concerning inspection, information, correction of defective work, recovery of specified costs, and enforcement of the franchise.<sup>15</sup> The Commission declines to resolve those local or contractual disputes in this proceeding.

In *Schimmoeller and Lemley v. Kentucky-American Water Company*, the complainants challenged construction practices, including compliance with highway encroachment permits and extended road closures. The Commission concluded that enforcement of permits issued by the Department of Highways was outside its jurisdiction and road-closure changes, absent unusual circumstances, did not constitute a material deviation from the approved utility facilities. The Commission distinguished traffic engineering and road management from its authority over utility rates and service.<sup>16</sup> That distinction is relevant here. Allegations concerning paving, traffic control, and compliance with LFUCG's right-of-way requirements do not, without facts connecting them to a regulated rate or service deficiency, establish a claim for relief before the Commission. This does not foreclose a properly supported complaint concerning a construction practice that affects regulated service.

The complaint also asserted that construction practices affected regulated water service.<sup>17</sup> Kentucky-American's tariff requires it to exercise reasonable care and diligence

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<sup>14</sup> Complaint at 3-5 and Appendix A.

<sup>15</sup> Franchise Agreement (Jan. 21, 2016), paragraph 1 and Exhibit A, LFUCG Ordinance No. 144-2015, Sections 4(c)–(d), 5–6, 10, 12, 14, and 20(c); LFUCG Resolution No. 459-2025 (Oct. 9, 2025), Section 1.

<sup>16</sup> Case No. 2009-00096, *Chris Schimmoeller and Connie Lemley v. Kentucky-American Water Company* (Ky. PSC Nov. 24, 2009), Order at 6–8.

<sup>17</sup> Complaint at 6-8.

to prevent interruptions and fluctuations and to make reasonable efforts to maintain adequate distribution-system pressure.<sup>18</sup> But the complaint did not identify a particular interruption, pressure event, water-quality event, boil-water advisory, affected customer, measurement, or other specific facts connecting any project listed in the complaint to a deficiency in water service. Its general assertions that delayed construction negatively affected water purity, pressure, and quantity did not describe the particular utility act or omission and facts necessary to show an unreasonable, unsafe, insufficient, or unjustly discriminatory service practice under KRS 278.260(1).

The facts alleged differ from those in *Tackett v. Bluegrass Water Utility Operating Company*. There, the complainant identified a March 16, 2025 sewage backup at her residence, approximately eight inches of wastewater in the basement, and a tree-root obstruction in the utility's main as the alleged cause. Although the utility sought dismissal because the complaint requested damages and its tariff disclaimed liability, the Commission denied the motion because questions concerning operation and maintenance remained unresolved.<sup>19</sup> Here, LFUCG described construction and restoration problems but did not provide comparable facts identifying a water-service condition caused by a particular utility practice.<sup>20</sup> The deficiency is the lack of supporting facts connecting the alleged practices to regulated service, not merely that construction or property damage is involved.

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<sup>18</sup> Kentucky-American Water Company Tariff, P.S.C. Ky. No. 11, Original Sheet No. 16 (Kentucky-American Tariff) (issued Jan. 5, 2026), effective Dec. 16, 2025, Rule 8.3(a)–(b).

<sup>19</sup> Case No. 2025-00148, *Bernice Coyle Watson Tackett v. Bluegrass Water Utility Operating Company* (Ky. PSC July 21, 2025), Order at 2–3.

<sup>20</sup> Complaint at 4-8 and Appendix A.

The Commission's treatment of the complaint in *Louisville/Jefferson County Metro Government v. Louisville Gas and Electric Company (Louisville Metro)* also supports requiring greater factual specificity. *Louisville Metro* challenged the allocation of a franchise-fee surcharge but did not sufficiently describe the relevant geographic areas and jurisdictional authority or support its assertion that all of the utility's gas customers benefited from mains beneath *Louisville Metro*'s rights-of-way.<sup>21</sup> The Commission rejected the complaint and allowed 20 days to amend.<sup>22</sup> Similarly, LFUCG's identification of particular construction projects does not supply the missing facts showing how those projects caused the asserted deficiencies in water purity, pressure, or quantity. General assertions about service effects or possible customer costs did not adequately explain the factual basis for the relief requested.

LFUCG identified itself as a Kentucky-American customer and alleged damage to the public rights-of-way for which it was responsible. To the extent LFUCG sought relief for water-service effects allegedly experienced by other Fayette County residents or customers; however, the complaint identified no affected person, alleged no authorization for LFUCG to act on another person's behalf, and did not otherwise explain the basis for asserting an individual customer claim. In Case Nos. 1999-00082 and 1999-00083, the Commission permitted Kentucky Industrial Utility Customers, Inc. to act for specific

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<sup>21</sup> Case No. 2016-00347, *Louisville/Jefferson County Metro Government v. Louisville Gas and Electric Company* (Ky. PSC Oct. 19, 2016), Order at 3–4; Complaint (filed Sept. 19, 2016) at 4, 7–9.

<sup>22</sup> Case No. 2016-00347, *Louisville/Jefferson County Metro Government v. Louisville Gas and Electric Company*, Order at 1-5.

named members who authorized it to file complaints on their behalf.<sup>23</sup> The complaint should clarify whether LFUCG alleges a direct injury or seeks to assert a claim on behalf of another person and, if the latter, the basis for doing so.

In *Futrell Holding Co., LLC v. Barkley Lake Water District (Futrell Holding)*, the complainant challenged service lines and a meter located on its property and sought termination of water service to a neighboring property.<sup>24</sup> The Commission found that the alleged property and contract injuries were not cognizable rate or service injuries and that stopping water flow would not redress the continued presence of the lines. The Commission also found that alleged inspection and service-line violations lacked supporting documentation. It rejected the complaint and allowed 20 days to amend.<sup>25</sup> Unlike *Futrell Holding*, LFUCG is itself a Kentucky-American customer. That distinction does not eliminate the need to identify the regulated-service injury alleged, its connection to Kentucky-American's conduct, and relief within the Commission's authority that would address it. An amended complaint should supply those facts rather than rely on LFUCG's customer status or its responsibility for the rights-of-way alone.

The complaint's rate-related allegations also lack a present, specific ratemaking issue for decision here. LFUCG alleged that reassessed permit fees and other construction costs might be passed through to customers, but identified no particular

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<sup>23</sup> Case No. 1999-00082, *Kentucky Industrial Utility Customers, Inc. v. Louisville Gas and Electric Company* (Ky. PSC Apr. 13, 1999), Order at 5–6; Case No. 1999-00083, *Kentucky Industrial Utility Customers, Inc. v. Kentucky Utilities Company* (Ky. PSC Apr. 13, 1999), Order at 5–6.

<sup>24</sup> Case No. 2023-00367, *Futrell Holding Co., LLC v. Barkley Lake Water District*, Complaint (filed Nov. 15, 2023) at 2–5.

<sup>25</sup> Case No. 2023-00367, *Futrell Holding Co., LLC v. Barkley Lake Water District* (Ky. PSC Mar. 10, 2025), Order at 6–9.

account, amount presently requested for recovery, test-year adjustment, system improvement project (SIP) project, or proposed ratemaking treatment.<sup>26</sup> In Case No. 2026-00094, Kentucky-American requested a general adjustment of its water rates, approval of the SIP, and tariff changes.<sup>27</sup> The Commission granted LFUCG full intervention in that proceeding by Order entered June 4, 2026.<sup>28</sup> LFUCG's direct testimony in Case No. 2026-00094 did not address the reassessed permit fees, restoration work, contractor performance, or specific projects alleged here.<sup>29</sup> Any request to disallow a specified cost, adjust the revenue requirement, or condition recovery through the SIP should be presented in Case No. 2026-00094, subject to that case's procedural schedule, any required leave, and the other parties' opportunity to respond. The Commission makes no determination here about the recoverability of any cost.

In its May 3, 2024 Order in Case No. 2023-00191 and its December 16, 2025 Order in Case No. 2025-00122, the Commission addressed Kentucky-American's Qualified Infrastructure Program and the treatment of water loss for ratemaking purposes.<sup>30</sup> Those

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<sup>26</sup> Complaint at 6-8.

<sup>27</sup> Case No. 2026-00094, *Electronic Application of Kentucky-American Water Company for an Adjustment of Rates, Approval of System Improvement Program, and Tariff Changes* (filed Aug. 7, 2026).

<sup>28</sup> Case No. 2026-00094, June 4, 2026 Order.

<sup>29</sup> Case No. 2026-00094, Direct Testimony and Exhibits of John Defever, CPA (Defever Direct Testimony) at 1-40, and Direct Testimony and Exhibits of Aaron L. Rothschild (Rothschild Direct Testimony) at 1-83.

<sup>30</sup> Kentucky-American Tariff, Original Sheet No. 48; Case No. 2023-00191, *Electronic Application of Kentucky-American Water Company for an Adjustment of Rates, a Certificate of Public Convenience and Necessity for Installation of Advanced Metering Infrastructure, Approval of Regulatory and Accounting Treatments, and Tariff Revisions* (Ky. PSC May 3, 2024), Order at 52-60; Case No. 2025-00122, *Electronic Application of Kentucky-American Water Company for an Adjustment of Rates* (Ky. PSC Dec. 16, 2025), Order at 32-38 and 41-45.

ratemaking determinations do not resolve the specific franchise and right-of-way restoration allegations raised in this complaint.

Finally, KRS 278.255 authorizes the Commission to conduct a management or operations audit but does not require one upon request. Given the absence of a specifically identified service event or other pleaded facts establishing a broader operational deficiency, the Commission declines to initiate an audit on the present complaint.

For these reasons, the complaint does not presently conform to 807 KAR 5:001, Section 20(1)(c), and does not establish a prima facie case. In keeping with the Commission's treatment of deficient complaints in *Futrell Holding* and *Louisville Metro*, LFUCG will be afforded 20 days to amend. The amendment should identify the specific regulated-service act or omission and supporting facts, state the direct injury or the basis for asserting a claim on behalf of another, and identify the Commission-authorized relief sought. LFUCG may pursue any specifically identified ratemaking relief in Case No. 2026-00094, subject to the requirements and schedule in that proceeding.

Since the Commission has not found a prima facie case exists related to the Complaint, the Commission does not find that Kentucky-American has satisfied the complaint pursuant to 807 KAR 5:001, Section 20(5). Although Kentucky-American reported that work on the five projects was complete, nearly complete, or awaiting a final paving cost-share accounting,<sup>31</sup> the record does not establish that LFUCG accepted that status or any relief as satisfying its complaint. The request to find the complaint satisfied is therefore denied.

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<sup>31</sup> Answer at 2 and 4-8.

IT IS THEREFORE ORDERED that:

1. LFUCG's complaint, as currently pleaded, is rejected for failing to conform to 807 KAR 5:001, Section 20(1)(c), and for failing to state a *prima facie* case.
2. LFUCG shall have 20 days from the date of service of this Order to file an amended complaint that conforms to 807 KAR 5:001, Section 20(1)(c), and states a *prima facie* case.
3. If LFUCG does not timely file an amended complaint, this matter shall be dismissed without prejudice and removed from the Commission's docket.
4. Kentucky-American's request to find LFUCG's complaint satisfied is denied.

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Entered on this 12th day of October, 2026.

PUBLIC SERVICE COMMISSION

  
\_\_\_\_\_  
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by Alt  
✓ permission

ATTEST:

  
\_\_\_\_\_  
Justin McNeil  
Executive Director

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