

Commonwealth of Kentucky
Before the Public Service Commission

In the Matter of:)
AN INVESTIGATION INTO THE FEASIBILITY AND) Case No. 2001-00117
ADVISABILITY OF KENTUCKY-AMERICAN WATER)
COMPANY'S PROPOSED SOLUTION TO ITS WATER)
SUPPLY DEFICIT)

ATTORNEY GENERAL'S RESPONSE TO KENTUCKY-AMERICAN'S
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DIRECTED
TO THE ATTORNEY GENERAL OF THE COMMONWEALTH OF KENTUCKY

The Attorney General tenders his response to the first data request of the
Kentucky-American Water Company.

Respectfully submitted,

A.B. CHANDLER III
ATTORNEY GENERAL
/s/ David Edward Spenard
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1. Provide all bases for the Attorney General's objection to the Commission's Preliminary Finding on page 4 of the Objections filed January 22, 2002, "that the proposed improvements to the Kentucky River are no [sic] sufficient to adequately, dependably and safely supply the total reasonable requirements of Kentucky-American's customers under maximum consumption through the year 2020."

RESPONSE

The Kentucky River Authority has the responsibility to ensure an adequate supply of water for the Kentucky River basin. The Authority has made tremendous progress since 1997, and the Authority continues to move forward to implement plans to ensure the adequacy and reliability of the water supply for the basin. The Authority has yet to reach a determination that its plan is deficient.

The Attorney General is not in agreement with the assumptions concerning population that are set forth in the Commission's 11 January 2002, Order. The Attorney General has yet to examine the demand projections; therefore, he is unwilling to sign-off on the estimation of demand set forth in the preliminary findings of fact.

2. Please explain and describe in detail how the Commission's Preliminary Finding quoted in the immediate preceding data request "puts the cart before the horse."

RESPONSE

First, the total and reasonable requirements of Kentucky-American are unclear. This point notwithstanding, Kentucky-American has yet to put forward a specific plan that outlines the resources that it will require. The Kentucky River Authority has consistently and repeatedly stated that it will exercise the responsibility to ensure an adequate supply of water.

The Order makes a determination concerning the proposed improvements by the Kentucky River Authority as if the Authority's proposed improvements have been made without reference to the requirements of Kentucky-American. Indeed, the opposite is true, the Authority's work has been made (and continue to be revised) taking into consideration the needs of water users, including Kentucky-American, that rely upon the Kentucky River as a resource.

Before the Authority can be fairly called upon to meet the requirements of Kentucky-American, Kentucky-American must present an actual plan. It is inappropriate to take a plan from the KRA (an agency that intends to meet the needs of water users in the basin), hold the results of the plan constant, and thereafter consider the KRA plan in the absence of a specific plan by Kentucky-American. In sum, it is appropriate for Kentucky-American to identify its requirements and the Company's plan of action to meet its responsibility. Thereafter, the next logical step is to consider the proposals of the Authority once it has had an opportunity to take the Kentucky-American plan into consideration.

3. Explain what is meant by the last sentence on page 5 of the Attorney General's Objections filed herein and dated January 22, 2002, and list all of the "other reasons."

RESPONSE

Kentucky-American made a clear statement of its position that it does not require the approval of, among others, the Lexington-Fayette Urban County Council.¹ Further, it is also clear, per the record from Case No. 2000-120, that the Company's decision to abandon the Louisville Pipeline was not merely a result of the "LFUCG's" wishes.

The Company wanted a resolution of the problem as "quickly and economically" as it could get one.² The Company saw the feasibility of the project continue to "dwindle in terms of potential litigation, extending the time frame of the project well beyond what the normal engineering course would take it."³ The Company knew that there was the "reality of potential litigation" and "all of the obstacles in terms of permitting and resistance to those type things."⁴ Thus, from a business development and planning standpoint, problems with feasibility and timeliness of getting the Louisville Pipeline in service were factors in the decision to drop the Louisville Pipeline project. The impact of Kentucky-American's planning activity on its shareholders does play a role in the Company's desire for a quick and economical solution.

¹ See Case No. 2000-120, TE Vol. I of II, page 68.

² Case No. 2000-120, TE Vol. I of II, page 89.

³ Case No. 2001-120, TE Vol. I of II, page 21.

⁴ Case No. 2001-120, TE Vol. I of II, page 23.

4. Does the Attorney General believe that the proposed improvements to the Kentucky River are sufficient to adequately, dependably and safely supply the total reasonable requirements of Kentucky-American's customers under maximum consumption to the year 2020? If the answer is yes, please provide a description of the proposed improvements, their expected date of completion and the funding thereof. If the answer is no, provide an explanation as to why the proposed improvements are insufficient.

RESPONSE

The Attorney General believes that the Kentucky River Authority has the responsibility for ensuring the adequacy and reliability of the water supply in the Kentucky River basin. The KRA has repeatedly stated that it will exercise its responsibility. The KRA has made tremendous progress since 1997, and it is continuing to move forward to implement plans to ensure the adequacy and reliability of the water supply in the Kentucky River basin. The Attorney General believes that the KRA will continue to act responsibly to ensure the reliability and adequacy of the water supply from the Kentucky River. The plans of the Authority include the rehabilitation of the locks and dams on the river. The Authority and other stakeholders are considering various measures to enhance the ability of the river to provide the needs of the Kentucky River basin during drought conditions, including revising water withdrawal permits and lowering intakes to permit the "mining" of water during low-flow conditions, raising the height of dams (either permanently or through crest gates) to increase the amount of water storage on the river, encouraging and/or mandating certain types of water conservation, and constructing a new dam and reservoir to increase the amount of water storage. The Attorney General is not aware that the Kentucky River Authority has made a final decision on the precise course of action that the KRA will take, but the Authority has stated unequivocally that it will take actions to ensure that the water supply needs of central Kentucky are met.

5. Provide a copy of the “base line” study prepared by the Fayette County Water Planning Council as mentioned on page 6 of the Attorney General’s Objections filed herein on January 22, 2002.

RESPONSE

The Fayette County Water Supply Planning Council assessment may be found in Section 6 (Water Use, Forecast & Infrastructure Assessment), Section 7 (Water Supplier Source Assessment), and Section 8 (Supply Adequacy Assessment) of the Fayette County 20 Year Comprehensive Water Supply Plan. Kentucky-American, as a party of record in this proceeding, has already been provided with a copy of this plan during the course of this proceeding. Specifically, the plan appears on CD-ROM 2 of the information distributed by Commission Staff on 25 January 2002. The Attorney General refers Kentucky-American to that source.

Notice of Filing

Counsel gives notice that (pursuant to Instruction 4(a) of the Commission's 15 May 2001, Order of procedure) the original and three copies in paper medium have been filed by hand delivery to Thomas M. Dorman, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601. Further, one copy in electronic medium has been filed by uploading the filing to the file transfer protocol site designated by the Executive Director all on this 14th day of February, 2002.

/s/ David Edward Spenard
Assistant Attorney General

Instruction 10 Certification

Per Instruction 10 of the Commission's 15 May 2001, Order of procedure, counsel certifies that the electronic version is a true and accurate copy of the document filed in paper medium, the electronic version has been transmitted to the Commission, and the Commission and other parties have been notified by electronic mail that the electronic version has been transmitted to the Commission.

/s/ David Edward Spenard
Assistant Attorney General

Certificate of Service

Counsel certifies that this response has been served by mailing a true and correct copy of the same, first class postage prepaid, to Roy W. Mundy II, Kentucky-American Water Company, 2300 Richmond Road, Lexington, Kentucky 40502; and Lindsey W. Ingram Jr., Stoll, Keenon & Park, LLP, 201 East Main Street Suite 1000, Lexington, Kentucky 40507 1380, Joe F. Childers, 201 West Short Street, Suite 310, Lexington, Kentucky 40507, Phillip J. Shepherd, P. O. Box 782, Frankfort, Kentucky 40602, Gerald J. Edelen, Department of the Army, Corps of Engineers, P. O. Box 59, Louisville, Kentucky 40201, Libby Jones, P. O. Box 487, Midway, Kentucky 40347, Damon R. Talley, P. O. Box 150, Hodgenville, Kentucky 42748-0150, and David Barberie, (Edward W. Gardner), Lexington-Fayette Urban County Government, Department of Law, 200 East Main Street, Lexington, Kentucky 40507 all on this 14th day of February, 2002.

/s/ David Edward Spenard
Assistant Attorney General