

Commonwealth of Kentucky
Before the Public Service Commission

In the Matter of:)
AN INVESTIGATION INTO THE FEASIBILITY AND) Case No. 2001-117
ADVISABILITY OF KENTUCKY-AMERICAN WATER)
COMPANY'S PROPOSED SOLUTION TO ITS WATER)
SUPPLY DEFICIT)

COMMENTS OF THE ATTORNEY GENERAL
REGARDING INVESTIGATION SCHEDULE
PROPOSAL (WITH MOTION TO AMEND)

and

COMMENT CONCERNING AREAS OF INQUIRY
FOR THE FIRST PHASE OF THIS INVESTIGATION

The Attorney General provides his comments regarding the Public Service Commission's proposal for a procedural schedule for this investigation. He requests modification of the proposal and, to the extent necessary, submits a motion to amend. Additionally, he submits comment regarding the areas of inquiry for the preliminary findings of fact. In support of this request, the Attorney General submits the following.

The Commission initiated this proceeding to investigate the feasibility and advisability of the Kentucky-American Water Company's proposal for solving its water supply deficit. Kentucky-American's source of supply situation has previously undergone Commission review.¹ The record for that proceeding as well as the records of other groups that have taken up this topic demonstrates that the issues are complex.

¹ *In the Matter of: An Investigation of the Sources of Supply and Future Demand of Kentucky-American Water Company*, Case No. 93-434.

The Commission proposes to divide the current investigation into two phases. In the first phase, the Commission will gather evidence in order to put together preliminary findings of fact and conclusions of law. In the second phase, the parties will utilize the Commission's preliminary determinations as a basis for further review and advocacy. Under the current proposal, the Commission will hold an evidentiary hearing on 26 March 2002.

The Attorney General does not believe that the procedural schedule proposal allocates a sufficient amount of time for the examination of the Commission's preliminary findings of fact and conclusions of law. Further, he does not believe that the proposal provides adequate discovery prior to the submission of any pre-filed direct testimony. Therefore, the Attorney General requests a modification of the proposal on these two points. As a means to mitigate the necessary increase in time, the Attorney General suggests elimination of rebuttal testimony discovery.

While it is appropriate to continue movement forward toward a solution, there is no statutory time limit applicable to this investigation. Further, there is nothing that indicates any exigent circumstances mandating a public hearing by 26 March 2002. The Commission has great flexibility in crafting the time frame for the second phase of the investigation, and the Attorney General urges the Commission to allocate the resource of time to this matter. Accordingly, the Attorney General suggests the following procedural schedule for the second phase.

- Issuance of preliminary findings of fact and conclusions of law 01/04/2002
- Parties may file comments on and objections to preliminary findings of fact 01/18/2002
- Publication of list of contested issues upon which an evidentiary hearing will be conducted 01/25/2002
- Each party may serve interrogatories and requests for production of documents upon other parties 02/08/2002
- Parties shall file with the Commission and serve upon all parties of record responses to interrogatories and requests for production of documents no later than 02/22/2002
- Each party may serve supplemental interrogatories and requests for production of documents upon other parties 03/08/2002
- Parties shall file with the Commission and serve upon all parties of record responses to supplemental interrogatories and requests for production of documents no later than 03/22/2002
- Each party may file written testimony in verified form no later than 04/05/2002
- Each party may serve interrogatories and requests for production of documents upon parties filing written testimony no later than 04/19/2002
- Parties shall file with the Commission and serve upon all parties of record responses to interrogatories and requests for production of documents no later than 05/03/2002
- Parties may file written rebuttal testimony in verified form with the Commission and serve upon all parties of record no later than 05/17/2002
- Public hearing for the purpose of cross-examination of witnesses 05/28/2002
- Parties may file written briefs with the Commission no later than 06/28/2002

The Commission has made a determination that Kentucky-American's business development planning and activities have an impact this area, and the items are relevant to this proceeding. Examination of these items should occur during both phases of the investigation.

WHEREFORE, the Attorney General submits his comments regarding the investigation schedule proposal and the scope of the initial phase of the investigation.

Respectfully submitted,

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ATTORNEY GENERAL
/s/ David Edward Spenard
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Notice of Filing

Counsel gives notice (pursuant to Instruction 4(a) of the Commission's 15 May 2001, Order of procedure) of the filing of the original and three copies in paper medium by hand delivery to Thomas M. Dorman, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601. Further, counsel gives notice of the filing of one copy in electronic medium by uploading the filing to the file transfer protocol site designated by the Executive Director. The filings took place on this 16th day of October, 2001.

/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 service of this document on 16 October 2001 by mailing a true and correct photocopy, first class postage prepaid, to the other parties of record: Roy W. Mundy II, Kentucky-American Water Company, 2300 Richmond Road, Lexington, Kentucky 40502; Lindsey W. Ingram Jr., Stoll, Keenon & Park, LLP, 201 East Main Street Suite 1000, Lexington, Kentucky 40507 1380; Gerard J. Edelen, PE Project Manager, Department of the Army Corps of Engineers, P.O. Box 59, Louisville, Kentucky 40201 0059; Phillip J. Shepherd, P.O. Box 782, Frankfort, Kentucky 40602; Joe F. Childers, 201 West Short Street Suite 310, Lexington, Kentucky 40507; Libby Jones, P. O. Box 487, Midway, Kentucky 40347; Edward W. Gardner, David Barberie, Lexington-Fayette Urban County Government, Department of Law, 200 East Main Street, Lexington, Kentucky 40507; and Damon R. Talley P.O. Box 150, Hodgenville, Kentucky 42748.

/s/ David Edward Spenard
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