

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

AN INVESTIGATION INTO THE FEASIBILITY AND)
ADVISABILITY OF KENTUCKY-AMERICAN WATER) CASE NO. 2001-117
COMPANY'S PROPOSED SOLUTION TO ITS WATER)
SUPPLY DEFICIT

**LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT'S COMMENTS AND OBJECTIONS
TO THE PRELIMINARY FINDINGS OF FACT**

COMES the Lexington-Fayette Urban County Government (the "LFUCG"), by counsel, in accordance with the Commission's Order dated January 11, 2002, and hereby submits its comments and objections to the Commission's preliminary findings of fact.

The LFUCG believes, as previously stated in Urban County Government Resolution No. 679-99, that if all of the relevant facts are duly considered by the Commission, a decision should be reached that Kentucky American Water Company's ("KAWC") water supply deficit issue should be addressed by focusing on a Kentucky River solution. It is the LFUCG's understanding that this case attempts to review KAWC's proposed solution to its water supply deficit. However, based upon the preliminary findings of fact, it is not clear that KAWC has actually submitted such a proposal and, if it has, on what facts this proposal is based.

Furthermore, the preliminary findings do not indicate what measures KAWC has taken with respect to addressing this issue, but instead focus on the actions of other

parties with respect to this issue, including the LFUCG. While some of these issues may be relevant, the focus of this investigation should be on KAWC.

Similarly, if, as a result of this proceeding, the Commission is going to direct KAWC as to how it must address the supply deficit issue, the sufficiency, cost (financial and otherwise), impact, and feasibility of the solution must be addressed regardless of the form it takes. Although the Commission has made preliminary findings with respect to the insufficiency, cost and lack of progress on a Kentucky River solution, the very same issues arise if an alternative solution is deemed necessary. Therefore, the total impact of any proposed solution to the water supply deficit must be addressed in order for the Commission to provide an informed decision.

More specifically, the findings of the Commission seem to vary with respect to the amount of water that the Commission is requiring KAWC to provide in order to address its supply deficit. For instance, pursuant to its Order of August 21, 1997, and in accordance with the applicable state regulation, the Commission has directed KAWC to obtain sources of supply such that it “can adequately, dependably, and safely supply the total reasonable requirements of its customers under maximum consumption through 2020.” See Order, pages 1, 3, 9 (emphasis added); 807 KAR 5:066, Section 10(4). However, the Commission also indicates the “unrestricted demands of Kentucky-American’s customers during drought conditions” is relevant to this determination and was utilized in determining the deficit amount. See Id. at page 3 (emphasis added). This finding seems to contradict the “reasonableness” requirement of 807 KAR 5:066,

and begs the question as to what amount of deficit the Commission is actually requiring KAWC to address.

Even if the Commission is claiming that KAWC must provide enough water to meet a worst-case scenario drought situation, there are restrictions that are implemented upon entering into quantifiable water deficits. See e.g., Section 11-9, Lexington-Fayette Urban County Government Code of Ordinances. This fact should be considered in this case.

In addition to determining the actual amount of the water supply deficit, at a minimum, the other areas which should require further input from the parties and review by the Commission include:

(1) The process the Division of Water utilizes in determining how to allocate additional river capacity on an “equitable” basis and what the amount that will be allocated to KAWC will be;

(2) The timeliness, cost (financial and otherwise), feasibility, efficiency and impact of a Kentucky River solution or its alternative; and

(3) The actions that KAWC has taken with respect to its proposed solution throughout its service area.

Finally, it is not clear what material was submitted with respect to this matter and whether all such material was reviewed by the Commission prior to making its preliminary findings. Therefore, the LFUCG respectfully requests that it be provided an opportunity to supplement this response upon being provided a listing of the materials considered by the Commission in this matter.

Respectfully submitted,

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT
Department of Law
200 East Main Street
Lexington, Kentucky 40507
(859) 258-3500

BY: /s/ Terry L. Holmes
Theresa L. Holmes
Acting Director of Litigation

BY: /s/ David J. Barberie
David J. Barberie
Corporate Counsel

NOTICE OF FILING

Counsel gives notice (pursuant to Instruction 4(a) of the Commission's May 15, 2001 Order of Procedure) of the filing of the original and three copies of this document have been filed by United States Mail, first class postage prepaid to Thomas M. Dorman, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40611, and by uploading the filing to the file transfer protocol site designated by the Executive Director, this 22nd day of January, 2002.

 /s/ David J. Barberie
ATTORNEY FOR LEXINGTON-FAYETTE
URBAN COUNTY GOVERNMENT

INSTRUCTION 10 CERTIFICATION

Per Instruction 10 of the Commission's May 15, 2001 Order of Procedure, the undersigned counsel hereby certifies that the electronic version is a true and accurate copy of the documents filed in paper, the electronic version has been transferred 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, on this the 22nd day of January, 2002.

_____/s/ David J. Barberie
ATTORNEY FOR LEXINGTON-FAYETTE
URBAN COUNTY GOVERNMENT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was served by first class U.S. Mail delivery, postage prepaid, on the following on this the 22nd day of January 2002.

Roy W. Mundy
Kentucky-American Water Company
2300 Richmond Road
Lexington, KY 40502

Lindsey Ingram, Esq.
Stoll, Keenon & Park
201 East Main Street, Suite 1000
Lexington, KY 40507-1380

Hon. David E. Spenard
Attorney General's Office
1024 Capital Center Drive
Frankfort, KY 40601-8204

Damon R. Talley, Esq.
P.O. Box 150
112 North Lincoln Blvd
Hodgenville, KY 42748
Attorney for Bluegrass Water Supply
Consortium

Phillip J. Shepherd, Esq.
307 West Main Street
P.O. Box 782
Frankfort, Kentucky 40602
Attorney for N.O.P.E., Inc.

Joe F. Childers, Esq.
201 West Short Street, Suite 310
Lexington, KY 40507
Attorney for N.O.P.E., Inc.

Gerard J. Edelen
PE Project Manager
Department of the Army Corps of Engineers
P.O. Box 59
Louisville, KY 40201-0059

Libby Jones
P.O. Box 487
Midway, KY 40347

/s/ David J. Barberie
ATTORNEY FOR LEXINGTON-FAYETTE
URBAN COUNTY GOVERNMENT

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