

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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

RESPONSES OF THE LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT TO THE INTERROGATORIES AND REQUESTS
FOR PRODUCTION OF KENTUCKY-AMERICAN WATER COMPANY

Comes Lexington-Fayette Urban County Government (the "LFUCG"), by counsel, and files the following response to the Interrogatories and Requests for Production of Documents propounded upon it by Kentucky-American Water Company:

Some of the documents requested have previously been provided to the Public Service Commission (the "Commission") pursuant to its Open Records Request served on the LFUCG, and have in turn been provided by the Commission to each of the parties to this action in the form of two (2) CD-ROMS. Therefore, with respect to this information, the LFUCG shall provide a reference to the CD-ROM number, the file number and the location of each such document. Unless otherwise noted, all such references shall be to CD-ROM number 2 under the "LFUCG" file, which is a sub-file of the "Open Records Act Requests" file. The undersigned counsel for the Urban County Government has responded to each item.

General Objections

The LFUCG objects to the interrogatories to the extent that they prematurely seek to obtain responses to questions regarding issues that are substantially similar to those specified on "Issues List" Attached as Appendix "A" to the Commission's Order of January 28, 2002 (the "Issues"). The LFUCG states that it has retained an expert witness, Dr. Lindell Ormsbee, who will file expert testimony on or before February 21, 2002, pursuant to the Commission's Order of January 28, 2002, and that such testimony will be responsive to some of the same issues upon which the Commission staff is attempting to obtain information. Therefore, the LFUCG should not be required to respond to any of the Commission Staff's interrogatories that may also be addressed through the filing of expert testimony, and the LFUCG specifically reserves the right to address these issues through the filing of such testimony. The LFUCG further objects that some of the questions are vague, or out of context, and that until such time as a specific definition is provided by Kentucky-American as to the meaning of such terms, or the LFUCG's expert has had the opportunity to formulate his opinion as to such matters, the LFUCG is not capable of providing a meaningful answer.

The LFUCG states that with respect to the issues the Commission has deemed relevant in this matter pursuant to its Order of January 28, 2002, the official position of the LFUCG is generally stated in Resolution No. 679-99 (the "Resolution"), which can be found in the 20010608 file under "Ordinances", pages 10 through 15. This statement should not be construed as a waiver of the LFUCG's right to provide testimony through the retention and use of an expert witness in this matter, or of undersigned counsel's ability to provide responses pertaining to legal issues.

Question 1.

Provide a copy of all information received by the Urban County Council in response to Section 2 of Resolution No. 679-99 requiring progress reports in June 2000 and in each November annually thereafter.

Response:

See General Objection, above, which is incorporated herein by reference. The LFUCG further objects on the following bases: (1) that the request can be interpreted to apply to documents protected by the attorney-client privilege and/or the attorney work product doctrine; and (2) that the production of any preliminary or draft documents or internal correspondence on such issues is of no relevance to this proceeding. Without waiving any objections, the LFUCG states this request has been responded to in Response to Questions number 9 and 15 of the Commission's Staff's First Set of Interrogatories and Requests for Production.

Question 2.

Provide a current estimate for the schedule of improvements listed in paragraphs 2 and 3 of the recommendations contained in Resolution No. 679-99 and all documents that support a change in the anticipated time of completion.

Response:

See General Objection, which is incorporated herein by reference. The LFUCG further objects that it does not know what meaning Kentucky-American has placed on the term "support a change in the anticipated time of completion" and states that this interrogatory should be directed to the Army Corps of Engineers, the Kentucky River Authority, Eastern Kentucky Power Cooperative, Inc., and the Kentucky-American Water Company for response. Without waiving any objections, the LFUCG states that the most recent progress report, from November 2001, which can be found in the 20011211 file under "submission", summarizes the information the LFUCG has with respect to the present status of each improvement.

Question 3

Describe and provide all of the information in the possession of the LFUCG that is different from the information that was in its possession at the time Resolution No. 679-99 was passed, upon which the resolution was adopted.

Response:

See General Objection, which is incorporated herein by reference. The LFUCG further objects to the scope of this interrogatory as being too broad, as it could be interpreted to cover any information provided to any employee or official within the LFUCG regardless of form or content, and on the basis that the LFUCG does not know what meaning Kentucky-American has placed on the terms "different from" or "upon which the resolution was adopted". Without waiving any objections, the LFUCG states that its response has been provided as part of its response to interrogatory number 1, above, which is incorporated herein by reference, and further states that virtually any of the material contained on the CD-ROM for the time period following the adoption of the Resolution could be argued to be "different" from the information in the possession of the LFUCG prior to the adoption of the Resolution.

Question 4.

Describe and provide the "relevant facts" as that phrase is used in the first sentence of the second literary paragraph of the LFUCG's comments and objections to the Commission's Preliminary Findings of Fact dated January 22, 2002.

Response:

See General Objection, which is incorporated herein by reference. The LFUCG further objects to this interrogatory on the basis that it asks for a legal opinion or conclusion. Without waiving any objections, the LFUCG states that the relevant facts will become established as this case progresses, and the LFUCG specifically reserves the right to supplement this response with the filing of testimony responsive to the Issues.

Respectfully submitted,

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NOTICE AND CERTIFICATION

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. 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. Undersigned counsel also certifies that a copy of the foregoing motion was served by first class U.S. Mail delivery, postage prepaid, of the following, all on this the 14th day of February 2002.

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