

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)

**RESPONSE TO COMMISSION STAFF'S
FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS**

COMES the Lexington-Fayette Urban County Government (the "LFUCG"), by counsel, and files the following response to Commission Staff's First Set of Interrogatories and Requests for Production of Documents:

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.

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General Objections

The LFUCG objects to the first set of 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 many of the questions are vague, or out of context, and that until such time as a specific definition is provided by the Commission 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.

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Staff Question 1.

List and describe the improvements to the Kentucky River that in LFUCG's opinion are necessary for the Kentucky River to serve as Kentucky-American Water Company's ("Kentucky-American") sole source of supply and meet Kentucky-American's expected customer demand in 2020 in the event of a drought of record.

Response:

See General Objection, above, which is incorporated herein by reference. The LFUCG further objects that it does not know what meaning or value the Commission Staff has placed on the term "expected customer demand in 2020", and therefore the LFUCG cannot be expected to answer this interrogatory with any specificity. Without waiving any objections, the LFUCG states that a general list of the minimal necessary improvements is found in the "Recommendations" section of the Resolution. The LFUCG specifically reserves the right to supplement this response with the filing of testimony responsive to the Issues.

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Staff Question 2. For each improvement listed in the response to Interrogatory 1,

 a. Identify the private entity or governmental agency with the primary responsibility for constructing the improvement.

Response:

See response to Interrogatory number 1, above, which is incorporated herein by reference. The LFUCG further objects that it does not know what meaning the Commission Staff has placed on the term "primary responsibility". Without waiving any objections, the LFUCG states that the owner of the facility at issue, the regulatory authority(s) over the facility or resource at issue, and/or the Kentucky-American Water Company would have the "primary responsibility" for constructing any improvements. In this case, depending on the improvement at issue, the relevant parties would be the Army Corps of Engineers; the Kentucky River Authority; the Kentucky Natural Resources Cabinet, Division of Water; Eastern Kentucky Power Cooperative, Inc.; and the Kentucky-American Water Company.

 b. Identify the private entity or governmental agency with the primary responsibility for the immediate financing of the improvement's construction.

Response:

See the response to Interrogatory number 1, above, which is incorporated herein by reference. The LFUCG further objects that it does not know what meaning the Commission Staff has placed on the terms "primary responsibility" or "immediate financing". Without waiving any objections, the LFUCG states that the owner of the respective facility at issue, the regulatory authority(s) over the facility or resource at issue, and/or Kentucky-American Water Company would have the "primary responsibility" for the immediate financing of the improvement's construction. In this case, depending on the improvement at issue, the relevant parties would be the Army Corps of Engineers (through the federal government); the Kentucky River Authority; the Kentucky Natural Resources Cabinet, Division of Water; Eastern Kentucky Power Cooperative, Inc.; and the Kentucky-American Water Company.

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Staff Question 2. For each improvement listed in the response to Interrogatory 1,

c. Identify the local, state or federal governments or governmental agencies that must review or approve the construction of the proposed improvement.

Response:

See the response to Interrogatory number 1, above, which is incorporated herein by reference. Without waiving any objections, the LFUCG states that depending on the improvement at issue, the relevant parties would be the Army Corps of Engineers; the Kentucky River Authority; the Kentucky Natural Resources Cabinet, Division of Water; and, possibly, the Environmental Protection Agency. The LFUCG further states that to the extent Kentucky-American Water Company or any other entity regulated by the Public Service Commission is determined to have an interest in such an improvement that serves as a basis for regulation, the Public Service Commission may have some limited, but mandatory, involvement in reviewing or approving such an improvement.

d. State the time period necessary to obtain the necessary regulatory approvals to construct the improvement.

Response:

See the response to Interrogatory number 1, above, which is incorporated herein by reference. Without waiving any objections, the LFUCG states that this time period would be dependent upon a determination as to which particular approvals are ultimately required to be obtained as to each improvement, and would be dictated by the applicable laws, regulations, policies and/or procedures for each such regulatory authority. The LFUCG further states that it is not in a position to provide a more specific response to this interrogatory at this time, other than to state that the most recent updates that it has been provided with respect to the improvements are found in file 20011211 under "submission".

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Staff Question 2. For each improvement listed in the response to Interrogatory 1,

- e. State the time period necessary to construct the improvement.

Response:

See the responses to Interrogatory numbers 1 and 2(a) through (d), above, which are incorporated herein by reference. Without waiving any objections, the LFUCG states that it is not in a position to provide a more specific response to this interrogatory at this time, other than to state that the most recent updates that it has been provided with respect to the improvements are found in file 20011211 under "submission".

- f. Describe Kentucky-American's responsibility for obtaining the financing, regulatory approval and construction of the improvement.

Response:

See the responses to Interrogatory numbers 1 and 2(a) and (b), above, which are incorporated herein by reference. Without waiving any objections, the LFUCG states that it is not in a position to provide a more specific response to this interrogatory at this time, other than to state that pursuant to the Commission's order in Case No. 93-434, Kentucky-American must "take the necessary and appropriate measures to obtain sources of supply so that the quantity and quality of water delivered to its distribution system shall be sufficient to adequately, dependably and safely supply the total reasonable requirements of its customers under maximum consumption through the year 2020."

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Staff Question 2. For each improvement listed in the response to Interrogatory 1,

g. Describe LFUCG's responsibility for obtaining the financing, regulatory approval and construction of the improvement.

Response:

See the response to Interrogatory number 1, above, which is incorporated herein by reference. The LFUCG further objects that it does not know what meaning the Commission Staff has placed on the term "responsibility". Without waiving any objections, the LFUCG states that at the present time it does not have a mandatory role with respect to obtaining financing, regulatory approval, or construction of improvements but that it continues to express a desire to assist with respect to such improvements, as summarized in the Resolution. The LFUCG further states that its ultimate responsibility in such matters is dependent on the actions of its Council.

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Staff Question 3.

a. State whether the improvements listed in LFUCG's Response to Interrogatory 1 will be sufficient to meet Kentucky-American's customer demand if the needs of other water suppliers and users that withdraw water from the Kentucky River basin are also considered.

Response:

See the response to Interrogatory number 1, above, which is incorporated herein by reference. The LFUCG further objects that it does not know what meaning the Commission Staff has placed on the terms "sufficient to meet Kentucky-American's customer demand" and the "needs of other water suppliers and users that withdraw water from the Kentucky River". Without waiving any objections, the LFUCG states that it is not in a position to provide a more specific response to this interrogatory at this time, and specifically reserves the right to supplement this response with the filing of testimony responsive to the Issues.

b. If the improvements listed in LFUCG's Response to Interrogatory 1 are not sufficient to meet Kentucky-American's customer demand if the needs of other water suppliers and users that withdraw water from the Kentucky River basin are also considered, explain why not.

Response:

See the response to Interrogatory number 3(a), above, which is incorporated herein by reference.

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Staff Question 4.

Provide all correspondence, memoranda, electronic messages or other documents created since 1996 in which LFUCG or its representatives or employees have discussed measures to reduce, restrict or limit the water use of the residents of Fayette County.

Response:

See General Objection, above, which is incorporated herein by reference. The LFUCG further objects on the following bases: (1) that such request is unduly burdensome to the extent that it attempts to require the LFUCG to produce responsive documentation for all of its employees, officials, or representatives, or all documentation pertaining to the meetings of the Lexington-Fayette Urban County Government Water Conservation Appeals Board (as further explained below); (2) that it can be interpreted to apply to documents protected by the attorney-client privilege and/or the attorney work product doctrine; and (3) 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 that it has previously provided to the Commission transcripts of the Fayette County Technical Meetings of September 1999 (file 20010612, pages 53 through 59, and 89 through 91) and the summaries or minutes from certain Urban County Council Work sessions where water issues, but not necessarily only conservation issues, were discussed.

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Response to Staff Question 4 (continued):

The LFUCG further states that it restricts the usage of water by its citizenry pursuant to Section 11-9 of the Code of Ordinances, Lexington-Fayette Urban County Government (the "Code"), which allows for the Mayor to make "public declarations" regarding various water shortage response "phases" and provides for the creation of the Lexington-Fayette Urban County Government Water Conservation Appeals Board, which interprets, adjusts or issues variances from necessary local water use regulations. See Sections 11-9(a) and (c) of Ordinance No. 221-2000. The LFUCG has therefore provided herewith copies of Ordinance Nos. 135-88 and 221-2000, the Mayor's "declarations", and the "Issues/Policy Decisions of the Water Conservation Appeals Board" for the requested period.

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Staff Question 5.

Provide all studies regarding the economic effects of water restrictions that LFUCG has prepared, commissioned, participated in or received.

Response:

See General Objection, above, which is incorporated herein by reference. Without waiving any objections, the LFUCG states that it does not believe it has any such studies in its possession.

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Staff Question 6.

List and describe all additional water conservation measures that LFUCG believes that Kentucky-American could implement to control or reduce its customer demand.

Response:

See General Objection, above, which is incorporated herein by reference. The LFUCG further objects that it does not know what meaning the Commission Staff has placed on the term "water conservation measures". Without waiving any objections, the LFUCG states it is not in a position to provide a more specific response to this interrogatory at this time, other than to state that if the term "conservation measure" includes demand restrictions, Kentucky-American has previously acknowledged that it could pursue "tariffs" to charge its users increased amounts during the occurrence of certain water shortage conditions. The LFUCG specifically reserves the right to supplement this response with the filing of testimony responsive to the Issues.

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Staff Question 7.

List and describe all additional water conservation measures that LFUCG believes that it could implement to control or reduce Kentucky-American's customer demand.

Response:

See General Objection and response to interrogatory number 4, above, which are incorporated herein by reference. The LFUCG further objects that it does not know what meaning the Commission Staff has placed on the term "water conservation measures". Without waiving any objections, the LFUCG states that pursuant to KRS 67A.070(1), it may enact and adopt within Fayette County any ordinance that it deems necessary for the health and welfare of its citizens that does not conflict with the Constitution and general statutes of the state. The LFUCG further states that pursuant to Section 11-9 of the Lexington-Fayette Urban County Government Code of Ordinances (the "Code"), with respect to demand restrictions, it has adopted restrictive measures that are placed on Kentucky-American's Fayette County customers upon the occurrence of certain water shortage conditions, and that any other restrictive measures would be dependent on the actions of its Council.

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Staff Question 8.

For each conservation measure set forth in LFUCG's response to Interrogatories 6 and 7, state the reduction in demand that the measure will produce.

Response:

See responses to interrogatory numbers 6 and 7, above, which are incorporated herein by reference. Without waiving any objections, the LFUCG states it is not in a position to provide a more specific response to this interrogatory at this time, and specifically reserves the right to supplement this response with the filing of testimony responsive to the Issues. Notwithstanding the foregoing, the LFUCG states that the actual effect of the water reduction measures in Fayette County taken pursuant to Section 11-9 of the Code should be reflected in the water usage numbers provided by Kentucky-American Water Company for those periods of time in 1998 and 1999 for which such restrictive measures were in place.

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Staff Question 9.

Provide a videotape copy or transcript of the Lexington-Fayette Urban County Council work session of December 4, 2001.

Response:

The LFUCG has provided herewith a copy of the transcript summary of the December 4, 2001 Urban County Council work session, and will provide a videotape copy as soon as possible.

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Staff Question 10.

State whether LFUCG is of the opinion that the current supply capacity of the Kentucky River, without any improvements, is sufficient to meet Kentucky-American's current customer demand if a drought of record occurs.

Response:

See General Objection, above, which is incorporated herein by reference. The LFUCG further objects that it does not know what meaning the Commission Staff has placed on the terms "current supply capacity of the Kentucky River" and "current customer demand if a drought of record occurs", and therefore cannot be expected to answer this interrogatory with any specificity. Without waiving any objections, the LFUCG has concluded in the Resolution that "water supply projections estimate a current water supply deficit under drought of record conditions of approximately one (1) billion gallons in the Lexington-Central Kentucky area . . .", and that "to maintain unrestricted demand there is a present water treatment capacity deficit of approximately 9.36 million gallons daily (mgd) within the service area of the Kentucky American Water Company. . . ." See Finding Numbers 1 and 2 of the Resolution. The LFUCG specifically reserves the right to supplement this response with the filing of testimony responsive to the Issues.

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Staff Question 11.

State whether LFUCG is of the opinion that the current supply capacity of the Kentucky River, without any improvements, is sufficient to meet Kentucky-American's current customer demand if a 100-year drought occurs.

Response:

See response to interrogatory number 10, above, which is incorporated herein by reference. The LFUCG further objects that it does not know what meaning the Commission Staff has placed on the terms "current supply capacity of the Kentucky River" and "current customer demand if a 100-year drought occurs", and therefore cannot be expected to answer this interrogatory with any specificity. The LFUCG specifically reserves the right to supplement this response with the filing of testimony responsive to the Issues.

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Staff Question 12.

State whether LFUCG is of the opinion that the current supply capacity of the Kentucky River, without any improvements, is sufficient to meet Kentucky-American's customer demand in 2020 if a drought of record occurs.

Response:

See response to interrogatory number 10, above, which is incorporated herein by reference. The LFUCG further objects that it does not know what meaning the Commission Staff has placed on the terms "current supply capacity of the Kentucky River" and "customer demand in 2020 if a drought of record occurs", and therefore cannot be expected to answer this interrogatory with any specificity. Without waiving any objections, the LFUCG has concluded in the Resolution that "water supply projections estimate a current water supply deficit under drought of record conditions of approximately on (1) billion gallons in the Lexington-Central Kentucky area growing to potentially approximately three (3) billion gallons by the year 2020" and that "to maintain unrestricted demand there is a present water treatment capacity deficit of approximately 9.36 million gallons daily (mgd) within the service area of the Kentucky American Water Company, which is projected to rise to approximately 18-20 million gallons daily by 2020." See Finding Numbers 1 and 2 of the Resolution. The LFUCG specifically reserves the right to supplement this response with the filing of testimony responsive to the Issues.

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Staff Question 13. State whether LFUCG is of the opinion that the current supply capacity of the Kentucky River, without any improvements, is sufficient to meet Kentucky-American's customer demand in 2020 if a 100-year drought occurs.

Response:

See response to interrogatory number 10, above, which is incorporated herein by reference. The LFUCG further objects that it does not know what meaning the Commission Staff has placed on the terms "current supply capacity of the Kentucky River" and "customer demand in 2020 if a 100-year drought occurs", and therefore cannot be expected to answer this interrogatory with any specificity. The LFUCG specifically reserves the right to supplement this response with the filing of testimony responsive to the Issues.

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Staff Question 14.

Lexington-Fayette Urban County Council Resolution 679-99 established a schedule of improvements to be met by 2002. For each improvement or task listed for this period, describe its present status.

Response:

See General Objection, which is incorporated herein by reference. The LFUCG further objects 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.

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Staff Question 15. Provide all progress reports that LFUCG has received from accordance with Lexington-Fayette Urban County Council Resolution 679-99.

Response:

The LFUCG received progress reports pursuant to the Resolution in June 2000 and November 2001. These reports can be found in the following files: for June 2000 - file 200020010606, "minutes", pages 133 through 141; file 20010622 "document group 1", pages 40 through 41, and the "memo_wiseman", "miller_lfucg_council_", "reeder_update" files; for November 2001 -- 20011211 file "submission". In addition, see the response to request for production number 9, above which is incorporated herein by reference, and the water supply presentation to the Urban County Council of May 2001 (20010622 file under "hassell_consortium_").

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 seven 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 with the exception noted below, 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. Counsel further states that there are several hard copies provided in response to Commission Staff Questions numbers 4 and 9 that were not provided as part of the electronic filing because they were not readily available in electronic format. 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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