

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
WRITTEN COMMENTS ON THE REPORT AND REQUEST FOR RELIEF**

COMES the Lexington-Fayette Urban County Government (the "LFUCG"), and submits the following written comments to Kentucky-American Water Company's ("Kentucky-American" or the "company") Report of November 8, 2004 (the "report"), and in accordance with the Commission's February 14, 2004 order (the "Order").

In addition, the LFUCG respectfully requests the Commission order the following: (1) that this case remain open; (2) that Kentucky-American, the Bluegrass Water Supply Commission (the "BWSC")¹, and any other party to this case that has meaningful information pertaining to the report and/or the water supply deficit issue be required to timely submit that information to the Commission and the parties to this case as it becomes available; (3) that Kentucky-American be required to submit for review and comment by the parties to this case any draft contract with the BWSC, as well as any documents pertaining to the rate treatment of any proposed funding alternative that Kentucky-American pursues with respect to the water supply deficit issue, whether with the BWSC or otherwise, as such documents become available; and (4) that Kentucky-

¹ It is the LFUCG's understanding that the Bluegrass Water Supply Consortium is now, in essence, the Bluegrass Water Supply Commission, and a party to this case.

American be required to respond, within a reasonable amount of time, to the requests for information attached hereto, which pertain to issues raised by the report, as well as any other requests for information raised by other parties to this proceeding.

A. This Proceeding Should Remain Open and Additional Requirements Should Be Ordered to Protect the Interests of All Parties

This proceeding should remain open. In addition, as a means of protecting the interests of the parties to this case, the Commission should enter an order requiring the actions specified above, as well as any other requested reasonable requirements.

The need for these additional requirements is self-evident. They are all reasonable and necessary for the Commission to make an informed final decision on the water supply deficit issue and to protect the parties to this proceeding. For instance, it would be expected that Kentucky-American and the BWSC might at some point have additional meaningful information to provide on the water supply deficit issue and/or the progress towards its solution.

Likewise, it would not be appropriate for Kentucky-American to seek the Commission's preliminary approval of the rate treatment of any funding alternative that is ultimately proposed without first notifying all of the parties to this case and giving them the fair opportunity to comment. Thus, there needs to be a requirement that Kentucky-American submit any contracts or other documents related to the water supply deficit issue (that would otherwise be under the Commission's jurisdiction) to the Commission prior to their finalization as part of this proceeding. In addition, such a private/public agreement might trigger different regulatory standards than would be in

place were the BWSC or the company proceeding independently. These potential jurisdictional issues should be fully and openly examined prior to Kentucky-American and the BWSC entering into a final agreement.

The report is confusing in some respects and begs clarification, as well as additional responses from Kentucky-American as to its intended future actions. It would be appropriate and reasonable to require Kentucky-American to at this time respond to requests for information pertaining to the report. Moreover, the responses to the requests for information should afford the Commission, LFUCG, and the other parties a better understanding of the report and its ramifications.² Therefore, the LFUCG respectfully requests that the Commission order Kentucky-American to timely respond to the requests for information attached hereto, and incorporated herein by reference, and provide the other parties to this action the opportunity to also have answered any requests for information pertaining to the report that they may have.

Finally, although the LFUCG believes that the actions specified above would suffice for the next year -- which would also allow a reasonable amount of time to determine whether the BWSC's plan for addressing the water supply deficit issue is supportable -- the LFUCG is not opposed to the Commission incorporating, as additional requirements, other reasonable actions that might be suggested by other parties. For the above-stated reasons the LFUCG respectfully requests that the Commission keep

² For instance, based upon the report the LFUCG has no clear understanding of what Kentucky-American's planned involvement with the BWSC consists of, nor of the accuracy of some of supply deficit numbers.

this proceeding open and enter an order requiring the additional actions specified above.

B. The LFUCG Generally Supports the Bluegrass Water Supply Commission's Solution at this Time

The LFUCG is a member of the BWSC and was instrumental in its creation.³ The inclusion of representatives from the areas in Central Kentucky that are directly impacted by the water supply deficit issue is the most logical approach to addressing the issue -- even if the Commission's role is reduced as a result. The BWSC includes representatives from the impacted areas, and it has proposed a solution that if implemented will in large-part address Kentucky-American's water supply deficit, assuming that the company is willing to obtain the necessary additional water from the BWSC.⁴

As a practical matter, it will take time to determine the feasibility of any proposed solution to the water supply deficit issue. The BWSC has developed a plan and appears to be taking meaningful steps at this time towards implementing it. Therefore, it should be given a fair opportunity to see whether it can successfully follow through. The suggestion by the Commission of a one year period in which the BWSC would take additional steps towards implementing its plan is a good one. This would appear to give the BWSC a reasonable opportunity to prove just how feasible its plan actually is.

The LFUCG does have a specific concern that the BWSC's proposed solution may be inadequate if the Division of Water fails to sufficiently credit the return of water to

³ Although the BWSC proposal has been presented to the LFUCG's Council, the LFUCG has not taken any final action with respect to it.

the Kentucky River, as the BWSC plan is predicated upon a credit of 12 MGD water from the division. (Report, Page 26).

Based upon the information contained in the report, which yet to be clarified, the LFUCG further responds to the Commission's specific areas of interest as follows:

1. The current estimate of the size of Kentucky-American's water supply deficit as of 2020

The LFUCG does not know whether the current estimate of Kentucky-American's water supply deficit as of 2020 is accurate, as certain aspects of the report pertaining to this issue appear to be contradictory and/or unclear (see, e.g., attached Requests for Information numbers 1 through 5). It does appear that the estimate of the supply deficit is generally in line with the BWSC's estimate on this issue, but the LFUCG does have the concern regarding water credits mentioned above, as well as reservations as to the assumptions Kentucky-American has made regarding its treatment capacity.

2. The Bluegrass Water Supply Commission's role in resolving Kentucky-American's water supply deficit

Given the fact that Kentucky-American has apparently pursued no alternative means of addressing its water supply deficit issue other than collaborating with the BWSC, and for the reasons previously stated above, it makes no sense at this time for the BWSC not to play an integral role in addressing this issue.

⁴ The BWSC's solution is predicated upon significant participation by Kentucky-American. If Kentucky-American, as the largest purveyor of water in the region, fails to adequately participate the BWSC's plan would not be feasible.

3. Kentucky-American involvement with the BWSC

Although the report suggests different potential levels of involvement that Kentucky-American may have with the BWSC going forward in time, there is apparently nothing in existence at this time that requires Kentucky-American to continue to “partner” with the BWSC, nor is it clear what level of involvement the company prefers or is serious about pursuing.

Kentucky-American is not a member of the BWSC, nor is it legally permissible for it to become one under the current law. It does not appear to have any contractual arrangement with the BWSC. It apparently does not have a definitive plan as to whether it will participate on any level in the design or construction of the BWSC’s proposed solution. In sum, the report does not indicate what Kentucky-American’s future planned involvement in the BWSC consists of, and as a result the LFUCG cannot fully respond to this issue at this time.

4. The feasibility and adequacy of the BWSC’s proposed solution

It appears that the largest criticism of the BWSC’s proposed solution would be its cost, and the ability of the BWSC to implement it on a timely basis. However, as mentioned above, this is the solution that has actually been proposed, and which has garnered regional support. Therefore, the BWSC should be given a fair opportunity to implement its proposal. In addition, attention should be given to the potential mismatch between the capacity expected to be provided by the BWSC’s proposal and the nonbinding commitments of its members and Kentucky-American, the reasons for

the mismatch, and whether the proposal must be substantially revised as a result (see, e.g., attached Request for information number 8).

C. Conclusion

The LFUCG is appreciative of all of the efforts that have taken place to solve Central Kentucky's (and thus Fayette County's) water supply deficit issue. As a member of the Bluegrass Water Supply Commission, it is supportive of that group's efforts to resolve the issue, and it should be given a reasonable and fair opportunity to pursue its proposed solution.

That being said, the LFUCG does have the concerns stated in this response, and believes that the additional relief it has requested is reasonable and necessary in order for the Commission and the parties to this proceeding to have the full picture on the issue of Kentucky-American's efforts to resolve its water supply deficit.

Respectfully submitted,

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CERTIFICATION

In accordance with the Commission's procedural orders the undersigned counsel hereby certifies that the original and one copy of the foregoing document have been filed by United States Mail, first class postage prepaid, to Elizabeth O'Donnell, Executive Director, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602-0615, and by uploading the document to the file transfer protocol site designated by the Commission. The undersigned counsel hereby certifies that the electronic version is a true and accurate copy of the document(s) filed in paper medium, 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 was served by first class U.S. Mail delivery, postage prepaid, on the following, all on this the 31st day of March 2005:

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LFUCG REQUESTS FOR INFORMATION PERTAINING TO THE REPORT

1. Page 4 states the *"PSC ordered that KAW work cooperatively with the KRA to obtain a safe yield analysis of the Kentucky River"*. Pages 19 and 20 of the report indicate that no additional studies have been completed to confirm or refute the findings of a 1991 study.

- a. What is the extent of Kentucky-American's progress with KRA in obtaining the safe yield analysis?
- b. Can any future progress be expected?

2. Page 15 states, *"KAW would pursue hydraulic improvements at the Richmond Road Station to produce an additional 5 mgd"*. Page 18 states that this recommendation is complete. Page 21 states that the *"Richmond Road Station (RRS) has a rated capacity of 25 mgd because of capital improvements made in 1992 that increased the rated capacity from 20 mgd"*. Page 22 notes that demonstration studies have shown that RRS is capable of 30 mgd (25 mgd rated + 5 mgd hydraulically improved) under certain conditions, and that approval to operate at the 30 mgd is "temporary".

- a. Was Kentucky-American's March 2001 recommendation presented to the Commission as a conditional, temporary finished water capacity improvement, or a permanent, reliable improvement?

3. Tables 2 & 3 show a short-term operational capacity of 80 mgd through the year 2020. Was the 80 mgd calculated by assigning a short-term capacity of 50 mgd to the Kentucky River Station (KRS) and 30 mgd to the Richmond Road Station (RRS)?

4. Page 22 states that the company has received approval from the Division of Water – Drinking Water Branch (DWB) *“for the re-rating of KRS to a reliable capacity of 45 mgd during summer months, provided that water quality standards are maintained”*. The report further states that the DWB has taken the position that *“in instances where the water system must exceed the reliable plant capacity on any given day (emphasis added) the DWB may allow a system to run at the higher rate provided that health standards are met and proper disinfection is maintained. This approval is considered temporary*. In the same paragraph, KAW states that it *“has demonstrated the capability of producing up to 50 mgd from KRS and 30 mgd from RRS ... while maintaining good finished water quality”*.

- a. Why hasn't Kentucky-American pursued a specific, conditional re-rate capacity for KRS and RRS in the same manner that KRS was previously, conditionally re-rated?
- b. Hasn't Kentucky-American taken a limited, or “on any given day” exception for finished water production and applied it universally?

5. Has any other entity, regulatory or otherwise, confirmed that producing 50 mgd from KRS and 30 mgd from RRS will result in a finished water that meets all promulgated water quality standards under variable raw water conditions?

6. With respect to the options specified on page 31, does Kentucky-American have a preference? If so, which one(s) and why? Are there any other options that the company considered but did not list? If so, please list them and explain why they are not feasible or desirable.

7. Given that there appears to be a greater and more immediate need for a source of raw water, rather than for a new treatment plant, please state what Kentucky-American believes should be its level of cost responsibility for the BWSC's proposed 45 mgd treatment plant at Pool 3.

8. The BWSC plan apparently calls for 67 mgd of additional treated water by 2020. However, the nonbinding commitments for water by the members of the BWSC and Kentucky-American total only 31mgd. Please state whether Kentucky-American believes that the BWSC plan should therefore be appropriately scaled back, modified, or revised given the substantial mismatch between proposed supply and anticipated demand. Please provide a detailed explanation.

- a. If the plan is not scaled back, please state what entity(ies) should be responsible for the costs associated with the capacity that exceeds the commitments of the members of the BWSC and the company.

9. Does Kentucky-American have any binding commitment to the BWSC? If so, please describe. If not, please explain how the Commission and the parties to this case can fully understand exactly what the company's planned future participation with the BWSC solution consists of.

10. Does Kentucky-American have a preference as to what its ongoing and future "partnership" with the BWSC will consist of? If so, please explain in detail.

11. Please list all actions that Kentucky-American is planning on taking with respect to its future "partnership" with the BWSC.

12. Does Kentucky-American have a fallback plan(s) in the event that the BWSC's solution proves unsuccessful? If so please describe in detail.

13. Please state when Kentucky-American anticipates drafting a written agreement with the BWSC as to the respective roles of BWSC and the company in implementing a source of supply plan, and as to the responsibilities of BWSC and the company for the costs of the plan.

14. Please state, and explain in detail, whether Kentucky-American believes that a cooperative source of supply plan between it and the BWSC will require one or more certificates of convenience for new construction pursuant to KRS 278.020.

15. Please state, and explain in detail, whether Kentucky-American believes that a cooperative source of supply plan between it and the BWSC will require approval by the Commission pursuant to KRS 278.200.

- a. Does Kentucky-American believe its inclusion as a partner with the BWSC triggers Commission jurisdiction over the entire BWSC plan?