

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

IN THE MATTER OF:)
)
NOTICE OF ADJUSTMENT OF THE RATES OF) **CASE NO. 2004-00103**
KENTUCKY AMERICAN WATER COMPANY)
EFFECTIVE ON AND AFTER MAY 30, 2004)

**KENTUCKY-AMERICAN WATER COMPANY'S
RESPONSE TO ATTORNEY GENERAL'S OBJECTION/MOTION
REGARDING SERVICE OF DOCUMENTS**

Kentucky-American Water Company ("Kentucky American Water") opposes granting the request contained in the Attorney General's April 27, 2004 Notice Regarding 807 KAR 5:001 and Objection/Motion Regarding Service of Documents, with which the Lexington-Fayette Urban County Government ("LFUCG") has joined by its Motion of April 29, 2004.

The Attorney General and the LFUCG have objected to that part of the Commission's April 22, 2004 Order which allows for the electronic submission of documents and pleadings to the Commission and electronic notification of such submission to all parties. The April 22, 2004 Order specifies the following for filing and service of a document: (1) the filer of the document submits an electronic copy (in .pdf form) of the document to the Commission (Order, p. 2, ¶ 4); (2) the filer of the document notifies the Commission and all other parties of the submission by e-mail (Order, p. 4, ¶ 5.j.); and (3) upon receipt of an e-mail notification of a filing, the recipient may access the Commission's electronic file depository and download a copy of the electronically filed document (Order, p. 5, ¶ 8). These procedures are simple, efficient, environmentally acceptable and reliable. They require that the filer upload the document and

that other parties must download the document. They relieve all parties of having to serve copies of the document on all other parties in paper medium.

In response to the Commission's April 22, 204 Order, the Attorney General and the LFUCG argue that, in addition to the above-described electronic procedure, they should receive all filed documents in paper medium from the filer. Generally, they argue that "lack of service through traditional 'paper' . . . presents significant hardships and risks." Specifically, they argue that:

1. The process of electronic submission of documents to the Commission is still evolving and that the Commission has no regulation concerning electronic filing (Attorney General's Memorandum, p. 2);

2. The elimination of service in paper medium will not reduce their costs or allow them to be more efficient (Attorney General's Memorandum, p. 3);

3. Recent cases in which electronic filing has been utilized were problematic because of "technical" difficulties (Attorney General's Memorandum, p. 3);

4. Their experts (who have not been retained yet) may not be technologically savvy enough to participate via electronic means (Attorney General's Memorandum p. 3);

5. In one case, an electronically filed document did not "match" the hard copy (Attorney General's Memorandum, p. 4, fn. 2); and

6. Even though electronic filing "has been of assistance" to the Attorney General, he still requires receipt of paper medium to avoid "significant risks and hardships" (Attorney General's Memorandum, pp. 2, 4).

The Attorney General readily admits that electronic filing has been helpful to it in the past and, thus, it has no objection to using electronic means in this case. However, he argues that

he needs to receive paper medium from the filer of the document instead of having to download the document from the Commission's electronic filing depository. In other words, he argues that, rather than performing the easy task of downloading and printing a document, he must receive the document from the filer already in paper medium. This argument is specious — what possible difference could it make whether the paper copy comes from the Attorney General's and LFUCG's printer (via a download) or the filer's office (via U.S. Mail). To download, the Attorney General simply has to open the document using Adobe Reader (which is available for free at www.adobe.com) and save it on his computer. Then, he can print it at his convenience if he wants it in paper medium. This procedure is simple and saves all parties from having to generate multiple paper copies every time they file a document.

The Commission's April 22, 2004 Order already addresses and resolves most of the Attorney General's arguments about the procedures and safeguards that must be followed in the uploading procedure. First, the uploaded document must be in .pdf format which is a widely used and accepted format. Second, all uploaded documents must be "search capable" and "optimized" for fast viewing over the internet, both of which provide tremendous convenience to all parties. Third, the filer of the document must attest that the electronically filed document is a true representation of the original document. Fourth, the filer of the document must notify all other parties if the electronically filed document does not contain everything contained in the paper medium. Thus, to the extent that the Attorney General is concerned that the electronic document will be difficult to download, will not be readily available, or will not be the same document that is in paper medium, such concern is misplaced and, in fact, has already been addressed by the Commission's Order.

Another of the Attorney General's arguments — that electronic filing “continues to evolve” and that “technical” problems could occur — is also misplaced. Certainly, Kentucky American Water cannot promise that there will never be a technical glitch. However, electronic filing and service of documents is no longer the “wave of the future.” That wave has arrived and is already firmly entrenched in the courts. In fact, the Commission's Order prescribes electronic filing and service procedures that are very similar to those procedures used by the United States Bankruptcy Court for the Eastern District of Kentucky. In that court documents are submitted electronically, all parties are notified by e-mail of such submission, and the receiving parties are responsible for downloading the electronically filed document. These procedures work extremely well and provide a great convenience to the court personnel and the parties.

Finally, the Attorney General argues that certain documents “overload” his e-mailbox (Attorney General's Memorandum, p. 3) and seems to argue that the experts he may obtain for this case may not be electronically astute and that the Commission's procedures will cause prejudice to them. (Attorney General's Memorandum, p. 3). First, under the Commission's Order, the Attorney General will not be receiving any large documents by e-mail. He will be *downloading* large documents from the Commission's electronic file depository, so “overloaded” e-mailboxes will not be an issue. Second, if any expert the Attorney General hires is not adept at using Adobe (which seems highly unlikely), then he/she can become adept very quickly with Adobe's simple software. Further, if the expert is incapable of learning how to use Adobe, the Attorney General himself can simply provide paper medium to his experts if need be.

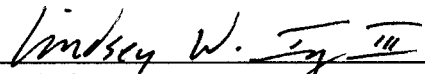
The Commission's April 22, 2004 Order allows for the filing of an original and one paper copy of electronically filed documents the first business day after the electronic filing is made. If an electronic filing is made on a Friday, and a paper copy mailed from Lexington to the Attorney

General on Monday, it could easily be Wednesday before receipt by the Attorney General in Frankfort. If the Attorney General copies the paper filing and overnights it to a witness, it will have been almost one week (six days) between the electronic filing and receipt by the witness. Clearly the Attorney General's witnesses will download the filings on the day they are made to avoid the delay. The mailing of a paper copy would seem to serve no purpose at all.

The Attorney General's reluctance to use electronic procedures must not stand in the way of the Commission's forward-looking use of these procedures, which is perfectly consistent with the means currently in use and/or being implemented in courts around Kentucky. In the past the Commission bravely ventured into the world of electronic filing. Having come this far, there is no reason not to complete the venture by requiring total electronic filing and service, which is the essence of the Commission's April 22, 2004 Order.

For the reasons set forth above, the Attorney General's and LFUCG's motion for service of documents via paper medium must be overruled.

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ATTORNEYS FOR
KENTUCKY AMERICAN WATER

CERTIFICATE

This is to certify that a true and accurate electronic copy of the foregoing has been transmitted to the Public Service Commission and that the undersigned has notified, by electronic mail, the following parties of its electronic transmission of the foregoing on this 4th day of May, 2004:

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