

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Adjustment of Rates of Kentucky-)
American Water Company)

Case No. 2004-00103

ATTORNEY GENERAL'S NOTICE OF
SUBSTITUTION AND SUPPLEMENTATION

The Attorney General submits the following items for substitution into his responses to various requests for information. (1) A revised OAG response to PSC 1 – 5 which reflects the correction of a citation error in footnotes 2 and 5; (2) cleaner images of the information in the exhibit to OAG Response to PSC 1 – 13; and (3) a cleaner image of the exhibit to OAG Response to KAWC 2 – 6; (3). Further, the Attorney General submits, as a supplement to his response to PSC 1 – 13 and KAWC 2 – 6, a glossary of terms.

Respectfully submitted,

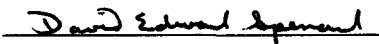
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Submission of Filing in Paper Medium

Per Instructions 3 and 13 of the Commission's 27 May 2004 Order, Counsel submits for filing, by hand delivery to Beth O'Donnell, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, the original and one copy in paper medium of the document. 12 October 2004 is the date for the filing in paper medium.


Assistant Attorney General

Certificate of Service

Per Instructions 4, 8 (d), and 12 of the May 27th Order, Counsel certifies service of a true and correct photocopy of the document by mailing the photocopies, first class postage prepaid, to the other parties of record on 11 October 2004.

The following are the other parties of record: David Jeffrey Barberie, Leslye M. Bowman, Lexington-Fayette Urban County Government, Department of Law, 200 East Main Street, Lexington, Kentucky 40507; Coleman D. Bush, Kentucky-American Water Company, 2300 Richmond Road, Lexington, Kentucky 40502; Joe F. Childers, 201 West Short Street, Suite 310, Lexington, Kentucky 40507; Roy L. Ferrell, West Virginia American Water Company, 1600 Pennsylvania Avenue, Charleston, West Virginia 25302; Lindsey W. Ingram III,

Stoll, Keenon & Park, LLP, 300 West Vine Street, Suite 2100, Lexington, Kentucky 40507-1801; Lindsey W. Ingram, Jr., Stoll, Keenon & Park, LLP, 300 West Vine Street, Suite 2100, Lexington, Kentucky 40507-1801; Michael A. Miller, West Virginia American Water Company, 1600 Pennsylvania Avenue, Charleston, West Virginia, 25302; Jon Parker, 201 W. Short Street, Suite 310, Lexington, Kentucky 40507; Bluegrass FLOW, Inc., c/o Foster Ockerman, Jr., 200 N. Upper Street, Lexington, Kentucky 40507; and Roy W. Mundy II, Kentucky-American Water Company 2300 Richmond Road, Lexington, Kentucky 40502.

David Edward Speman
Assistant Attorney General

Certification Regarding Electronic Filing

Counsel certifies that he has (per Instructions 3 and 8 (b) of the May 27th Order) submitted one copy of the document in electronic medium. Pursuant to Instructions 8 (a) and 8 (c) of the May 27th Order, he certifies that the electronic version of the filing is a true and accurate copy of the document filed in paper medium and that he has, by electronic mail, notified the Commission and the other parties that the electronic version of the filing has been transmitted to the Commission. (See attached) 11 October 2004 is the date of filing in electronic medium.

David Edward Speman
Assistant Attorney General

**Answers of Office of Attorney General to
Commission Staff's First Set of Information Requests**

5. At page 11 of his direct testimony, Scott J. Rubin states that Kentucky-American's proposed economic development rate is unlawful.
- (a) Identify the statute(s), administrative regulation(s), or legal doctrine(s) that lead the AG to believe the proposed rate is unlawful.
 - (b) State whether the AG takes the position that all economic development rates are unlawful.
 - (c) Explain how the AG's position regarding Kentucky-American's proposed economic development rate is consistent with the position that the Commission adopted in Administrative Case No. 327.

Answer:

- (a) The Kentucky-American Water Company is not seeking approval of an economic development rate.¹ The "tariff" is not truly part of the filing of the current case.² Therefore, there is no proposed economic development rate.

Mr. Rubin's testimony at page 11 (lines 2 through 9) pertains to Kentucky-American Water Company's testimony regarding the possibility of proposing an economic development tariff in the future. He recommends that the Company "cease expending its resources on the development of an economic development tariff." The position of the Office of the Attorney General is in accord with his testimony.

Public Service Commission is a creature of statute, and it has only those powers that the General Assembly elects to provide. *Boone County Water v. Public Service Commission*, Ky., 949 S.W.2d 588, 591 (1997). The fact that the General Assembly has given the Commission jurisdiction over utility rates does not mean that the Commission's power to set rates is unfettered. *South Central Bell v. Utility Regulatory Commission*, Ky., 637 S.W.2d 649 (1982).

KRS 278.170 contains the express statutory mandate for the Commission with regard to free or reduced rate service. The statute does not contain an authorization for a utility to grant free or reduced rate service for economic development. The General Assembly has yet to add a statute to or otherwise amend an existing statute in KRS Chapter 278 to authorize free or reduced rate service for economic development.

- (b) While the term "rate" is defined by KRS 278.010, the section does not contain a definition for the term "economic development rate" for use in KRS Chapter 278. In Administrative Case No. 327³ the Commission did, for the purposes of that investigation, provide a definition of an economic development rate.⁴ The Attorney

¹ KAWC Response to AG 1 – 14.

² KAWC Response to PSC 3 – 52.

³ *In the Matter of: An Implementation of Economic Development Rates by Electric and Gas Utilities.*

⁴ Administrative Case No. 327, Order, 24 September 1990, page 1.

**Answers of Office of Attorney General to
Commission Staff's First Set of Information Requests**

General is not aware of any other economic development rate(s) falling outside of this definition. Thus, the Attorney General limits his response to the economic development rate described in Administrative Case No. 327.

It is the position of the Office of the Attorney General that the Commission is a creature of statute. The General Assembly has yet to add a statutory provision to or amend an existing provision of Chapter 278 to authorize a utility to grant free or reduced rate service for economic development. In light of the detail (or comprehensive nature) of the General Assembly's mandate regarding free or reduced rate service in KRS 278.170, the Attorney General does not believe that the ability for the Commission to authorize an economic development rate is within the Commission's necessarily implied powers. Hence, the Attorney General believes that these rates are unlawful.

- (c) Again, Kentucky-American has not proposed an economic development rate in this case.⁵ For the sake of discussion, the definition of an economic development rate in Administrative Case No. 327 does not include a water rate discount. Hence, the possible proposed economic development rate of Kentucky-American does not fall within the scope of the Commission's definition of an economic development rate as per Administrative Case No. 327.

The Attorney General's position regarding Kentucky-American's "proposed" economic development rate is neither consistent nor inconsistent with the position that the Commission adopted in Administrative Case No. 327 concerning gas or electric rate discounts. Further, there is no requirement that the Attorney General's position regarding free or reduced rate service for economic development must be consistent with Administrative Case No. 327.

⁵ KAWC Response to PSC 3 – 52.

WATER

COMPANY	PER SHARE		
	LATEST 12 MONTHS EARNINGS AVAILABLE	EARNINGS	CURRENT ANNUAL DIVIDEND
American States Water Co. (NYSE-AWR)	3/04	0.66	0.88
Aqua America, Inc. (NYSE-WTR)	3/04	0.81	0.48
Artesian Resources Corp. (NDQ-ARTNA)	3/04	0.97	0.83
California Water Service Group (NYSE-CWT)	3/04	1.32	1.13
Connecticut Water Service, Inc. (NDQ-CTWS)	3/04	1.14	0.83
Middlesex Water Company (NDQ-MSEX)	3/04	0.59	0.66
Pennichuck Corporation (NDQ-PNNW)	3/04	0.45	0.86
SJW Corporation (ASE-SJW)	3/04	1.66	1.02
Southwest Water Company (NDQ-SWWC)	3/04	0.49	0.19
York Water Company (NDQ-YORW)	3/04	0.83	0.58
AVERAGE			

COMPANIES

DATA (1)		PERCENT (2)			DIV BOOK (2)	PRICE EARN MULT
STOCK PRICE	COMMON SHARES O/S MILL	DIV PAYOUT	DIV YIELD	MKT. BOOK		
21.90	15.2	134	4.0	158	6.4	33.2
18.91	92.8	59	2.5	263	6.7	23.3
23.25	3.9	86	3.6	172	6.1	24.0
26.19	16.9	85	4.3	184	7.9	19.8
24.17	8.0	73	3.4	230	7.9	21.2
16.87	10.6	112	3.9	226	8.8	28.7
25.32	2.4	191	3.4	205	6.9	56.3
30.84	9.1	61	3.3	169	5.6	18.6
12.17	14.8	39	1.6	178	2.8	25.0
17.16	6.4	70	3.4	276	9.3	20.7
		91	3.3	206	6.8	27.1

WATER

COMPANY	OPER REV \$ MILL (1)	% WAT REV	NET PLANT \$ MILL	NET PLANT PER \$ REV (1)
American States Water Co. (NYSE-AWR)	212.6	88	545.7	2.57
Aqua America, Inc. (NYSE-WTR)	386.5	92	1,629.6	4.22
Artesian Resources Corp. (NDQ-ARTNA)	36.5	97	165.1	4.52
California Water Service Group (NYSE-CWT)	286.1	97	672.2	2.35
Connecticut Water Service, Inc. (NDQ-CTWS)	51.1	92	189.0	3.70
Middlesex Water Company (NDQ-MSEX)	65.0	87	212.3	3.27
Pennichuck Corporation (NDQ-PNNW)	21.3	88	64.0	3.00
SJW Corporation (ASE-SJW)	153.0	97	274.2	1.79
Southwest Water Company (NDQ-SWWC)	176.6	33	140.3	0.79
York Water Company (NDQ-YORW)	21.5	87	109.1	5.07
AVERAGE				

COMPANIES

S&P BOND RATING	MOODY'S BOND RATING	COMMON EQUITY RATIO (3)	% RETURN ON BOOK VALUE		REGULATION	
			COMMON EQUITY (4)	TOTAL CAPITAL	ALLOWED ROE	ORDER DATE
A-	A2	43	4.7	5.7	10.00	4Q/99
AA-	NR	44	12.5	8.5	10.15	-
NR	NR	36	7.4	6.7	10.50	04/03
NR	A2	46	9.9	7.6	9.70	-
A	NR	52	10.9	8.4	12.70	-
A+	NR	40	7.9	6.1	10.38	-
NR	NR	49	3.6	5.2	10.33	-
NR	NR	54	9.3	8.1	9.95	04/01
NR	NR	63	9.1	7.7	9.84	05/03
NR	NR	55	13.6	10.8	-	06/03
		48	8.9	7.5	10.39	

NATURAL GAS DISTRIBUTION

COMPANY	OPER REV \$ MILL (1)	% GAS REV	NET PLANT \$ MILL	NET PLANT PER \$ REV (1)
AGL Resources Inc. (NYSE-ATG)	1,282.2	78	2,375.5	1.85
Atmos Energy Corporation (NYSE-ATO)	3,552.1	46	1,661.3	0.47
Cascade Natural Gas Corporation (NYSE-CGC)	317.5	100	42.2	1.08
Chesapeake Utilities Corporation (NYSE-CPK)	68.4	67	168.4	1.00
Delta Natural Gas Company (NDQ-DGAS)	72.1	63	115.0	1.49
El Paso Corporation (NYSE-EP)	10,032.0	26	21,054.0	2.30
Energen Corporation (NYSE-EGN)	884.0	63	1,441.9	1.63
Energy West Incorporated (NDQ-EWST)	69.8	59	38.7	0.55
EnergySouth, Inc. (NDQ-ENSI)	113.9	97	204.7	1.80
Equitable Resources, Inc. (NYSE-EQT)	1,105.4	60	1,775.9	1.61
KeySpan Corp. (NYSE-KSE)	6,998.2	61	8,693.7	1.24
Kinder Morgan, Inc. (NYSE-KMI)	1,131.6	32	5,075.0	5.37
Laclede Group, Inc. (NYSE-LG)	1,155.6	74	634.1	0.55
National Fuel Gas Company (NYSE-NFG)	2,080.9	56	3,011.4	1.45
New Jersey Resources Corp. (NYSE-NJR)	2,403.9	35	874.3	0.36
NICOR Inc. (NYSE-GAS)	2,607.1	88	2,486.7	0.95
Northwest Natural Gas Co. (NYSE-NWN)	657.0	99	1,216.3	1.85
NUI Corporation (NYSE-NUI)	632.9	98	970.0	1.53
ONEOK, Inc. (NYSE-OKE)	2,782.1	61	3,696.3	1.33
Peoples Energy Corporation (NYSE-PGL)	2,217.4	69	1,895.8	0.85
Piedmont Natural Gas Co., Inc. (NYSE-PNY)	1,420.7	77	1,823.7	1.28
Questar Corporation (NYSE-STR)	1,557.0	47	2,764.6	1.78
RGC Resources, Inc. (NDQ-RGCO)	110.1	76	66.8	0.61
SEMCO Energy, Inc. (NYSE-SEN)	543.7	85	544.3	1.00
South Jersey Industries, Inc. (NYSE-SJI)	722.5	65	954.7	1.04
Southern Union Company (NYSE-SUG)	1,720.1	76	3,188.6	1.85
Southwest Gas Corporation (NYSE-SWX)	1,301.1	85	2,197.6	1.69
Southwestern Energy Company (NYSE-SWN)	348.5	80	801.3	2.30
UGI Corporation (NYSE-UGI)	3,360.6	16	1,884.8	0.56
WGL Holdings, Inc. (NYSE-WGL)	2,075.4	62	1,886.7	0.91
Williams Companies, Inc. (NYSE-WMB)	15,202.6	8	12,033.7	0.79
AVERAGE				

& INTEGRATED NAT. GAS COMPANIES

S&P BOND RATING	MOODY'S BOND RATING	COMMON EQUITY RATIO (3)	% RETURN ON BOOK VALUE		REGULATION	
			COMMON EQUITY (4)	TOTAL CAPITAL	ALLOWED ROE	ORDER DATE
A-	A3	47	15.0	10.2	10.99	
A-	A3	52	10.4	8.8	12.10	
BBB+	Baa1	43	9.7	8.4	11.75	
NR	NR	52	12.1	9.8	-	
NR	NR	44	7.5	7.2	-	12/99
B+	B1	22	NM	NM		
A-	A1	57	17.1	12.5	13.40	06/02
NR	NR	33	NM	3.7	12.63	
NR	NR	49	14.3	8.5	13.60	10/01
A	A2	58	19.2	9.7	11.00	
A+	A2	37	11.4	7.6	10.20	
BBB	Baa2	38	15.3	7.7	-	
A	A3	39	11.3	7.9	-	10/02
BBB+	A3	47	15.9	10.4	11.50	
AA-	Aa3	58	16.7	11.1	11.50	01/94
AA	Aa3	52	10.4	8.2	-	11/99
A	A2	50	10.1	11.1	10.20	
BB	Ba3	26	NM	1.8	10.60	
A-	Baa1	42	13.7	12.5	-	
A-	Aa3	33	10.8	6.5	11.20	
A	A3	58	12.9	10.6	11.30	
A+	A2	57	14.8	10.5	11.20	12/02
NR	NR	53	13.0	9.7	9.85	
BB-	Ba2	25	NM	2.8	11.98	
A	Baa1	48	12.4	8.7	10.00	07/04
BBB+	Baa3	35	8.9	7.6	10.93	
BBB-	Baa2	35	8.4	7.0	10.69	
BBB	Ba2	57	18.3	13.3	11.30	11/96
BBB	A3	31	13.4	8.5	-	07/96
AA-	A2	53	11.0	8.5	10.95	
B+	B1	26	0.7	6.9		
		44	12.4	8.6	11.31	

GLOSSARY OF TERMS

Latest 12 Month Earnings Available -

Earnings per share as reported, based upon the latest 12 months ending as of the last day of the month reported in this column.

Earnings -

Earnings per share as reported before extraordinary items for the latest 12 months ending on the date reported.

Current Annual Dividend -

Latest quarterly dividend per share annualized.

Book Value -

Common equity divided by Common Shares Outstanding for the latest end figures available.

Price -

Closing market price per share of common stock on the date cited at the head of the column.

Common Shares Outstanding -

Common shares Outstanding for the latest quarter end figures available.

Dividend Payout -

Annualized Dividend per share divided by the reported Earnings per Share, multiplied by 100.

Dividend Yield -

Annualized Dividend per share divided by the market price per share of common stock reported, multiplied by 100.

Market/Book Ratio -

Market price per share of common stock reported, divided by the by the reported Book Value per share multiplied by 100.

Dividend/Book Ratio -

Annualized Dividend per share divided by the reported Book Value per share, multiplied by 100

Price-Earnings Multiple Ratio -

Market price per share of common stock reported divided by the reported earnings per share.

Operating Revenue -

Total operating revenues for the latest 12 months as available.

% Electric /Gas /Water /Telephone Revenue -

Percentage of regulated revenues attributable to Elec./Gas/Water/Tele. operations relative to total Operating Revenue. Company groupings are based on revenue percentages and SIC classification criteria.

Net Plant -

Total Property, Plant and Equipment less Depreciation and Contributions in Aid of Construction for the latest quarter end figures available.

Net Plant Per Revenue-

Net Plant as reported divided by Operating Revenue as reported.

Standard & Poor's and Moody's Bond Ratings-

Ratings for each company's most senior long term debt security. For holding companies, ratings are based on an average of the bond ratings available for the regulated subsidiaries.

Common Equity Ratio -

Common Equity capital for the latest quarter divided by total capital as reported, multiplied by 100. Total capital is equal to the sum of long-term debt, current maturities, short-term debt, preferred stock and common equity for the latest quarter end figures available.

% Return on Book Value -- Common Equity -

Income Available for Common Equity divided by Average Common Equity, multiplied by 100. Average common equity based upon the most recent beginning and ending moving 12 month period available.

% Return on Book Value --Total Capital -

Income before Interest Charges (inclusive of taxes) divided by Average Total Capitalization, multiplied by 100. Average total capitalization based upon the most recent beginning and ending four quarter values available.

Allowed ROE -

Most recent reported state-level allowed return rate on common equity (ROE). ROE for companies operating in multiple jurisdictions are averages. Various companies have received incentive-base ROE authorizations that are not reported upon in this report.

Order Date -

The date of the commission order authorizing reported ROE. For companies operating in multiple jurisdictions, no date is given because reported ROE is an average derived from multiple commission orders issued at different times.

(NYSE) - New York Stock Exchange.

(ASE) - American Stock Exchange.

(NDQ) - Nasdaq.

NM - Not Meaningful.

NA - Not Available.

Additional Notes -

(1) Balance sheet values are the latest quarter end figures as available. Income statement figures are for the latest 12 month available

(2) Based on per share value.

(3) Based on permanent capital. (The sum of long-term debt, current maturities, short term debt, preferred stock and common equity capital.)

(4) In many instances, available information require that Per Share and % Return on Book Value of Common Equity/Total Capital derived from figures that represent financial activity from different 12 month periods.

(5) The following companies do not pay cash dividends. However, they do pay a quarterly stock dividend that is non-taxable upon receipt:

Citizens Utilities Company (NYSE-CZN)

Effective July 12, 2004 Citizens reinstated its cash dividends.

Commonwealth Telephone Enterprises (NDQ-CTCO)

Southern Union Company (NYSE-SUG)

(6) The telephone companies have been divided into two groups: Telephone Companies and Small Telephone Companies.

All companies included in the reports are traded in the United States (Companies trading over-the-counter are not included).

We have divided the telephone groups based upon their annual revenue.

If a company generates less than \$200 million, it is included in the small company group, otherwise it is considered a large telephone company.

Also due to the current changes taking place in the telecommunications industry, we have decided to include some independent telephone

companies which offer local telephone service. And, we have decided to include the major Competitive Local Exchange Carriers (CLECs), which have been operating as CLECs for at least 2 years, and which are publicly traded.