

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ADJUSTMENT OF THE)
RATES OF KENTUCKY-) CASE NO. 2004-00103
AMERICAN WATER COMPANY)

**POST-HEARING BRIEF ON BEHALF OF
COMMUNITY ACTION COUNCIL FOR
LEXINGTON-FAYETTE, BOURBON, HARRISON
AND NICHOLAS COUNTIES, INC.**

Comes now the Community Action Council for Lexington-Fayette, Bourbon, Harrison and Nicholas Counties, Inc. (“CAC”), by counsel, and hereby tenders its post-hearing brief.

INTRODUCTION

In this proceeding, Kentucky-American Water Company (“the Company”) seeks a rate increase of approximately \$7.3 million. As part of its proposed tariff, the Company has proposed a low-income assistance program consisting of a 25% discount on the service charge for residential customers who are certified as being below the federal poverty limit, which the Company estimates will cost the other residential ratepayers approximately \$30,000 per year.

It is the position of CAC that the rate and fee increases proposed by the Company in this action are too high and will significantly impact the ability of low-income customers to pay for essential services, including water. However, the proposed low-income discount, coupled with the continuation of the existing “Water for Life” program will help mitigate the effects of the proposed increase on the low-income customers of the Company, and should be approved by the

Commission. If the Commission approves the activation fee proposed by the Company as part of its tariff in this case, then the Water for Life program should be transitioned by the Company and CAC to help alleviate this burden, which will fall most heavily on the low-income customers of the Company.¹

EVIDENCE AND TESTIMONY

The low-income program proposed by the Company states that CAC will provide initial intake and screening for potential customers of the program. Eligibility for enrollment in the program would be handled by CAC's automated database (IRIS). Information will be transmitted to the Company so that a discount can be applied to the customer's bill. The eligibility of each customer receiving the low-income discount would be re-verified annually by CAC.

CAC is well-positioned to provide such services, since its staff has significant experience operating energy assistance programs, including water programs, for many years. CAC has operated the Water for Life program since 2000, and has operated the federal Low Income Heating & Energy Assistance Program (LIHEAP) in its core service area since the inception of LIHEAP. In addition, CAC has operated the Columbia Gas of Kentucky Customer Assistance Program since 1995, providing 850 customers per month with financial relief, resulting in 738 fewer shut-offs during the third year of the pilot program. An independent evaluation of the Columbia Gas program after a three year pilot also indicated that the low-income program had resulted in more consistent and affordable payments by low-income customers of that utility.

¹Mike Miller indicated in his testimony that the Company will consider increasing its stockholder contribution to the Water for Life fund as part of its annual review of charitable contributions (TE, Vol. III, Miller testimony, p. 30). This is consistent with discussions between CAC representatives and Company representatives.

Finally, for more than 20 years, CAC has operated the WinterCare Energy Fund by providing administrative services, financial management and marketing support for various utilities statewide. CAC has also operated Weatherization Assistance Programs to various utilities' customers for over 25 years (Burch testimony, pp. 3, 4, 10).

Census data for 2000 indicates that there are 11,945 customers of the Company in poverty throughout its service territory - representing approximately 12.11% of the Company's total customer base. The Census Bureau determines the number of families in poverty using income and family size as the basis. "Families in poverty" are those that cannot meet their basic needs due to lack of income. From this population alone, the Company's rate increase is expected to extract an additional \$472,035 annually from already overstretched budgets. Coupled with the new \$24 activation fee for those who have been disconnected or moved, the rate increase could result in a substantial widening of the utility affordability gap for low-income customers. The low-income program being proposed will help create a safety net to bridge this affordability gap that the existing Water for Life program simply cannot provide (Burch testimony, pp. 6-7). Even the witness for the Attorney General, Scott Rubin, noted the severe hardship on low-income customers from rising utility rates:

Q. Isn't it true that the . . . presentation that you gave concluded with a slide that said the bottom line is the problem for the low-income customers of growing rates and higher energy cost, including water bills, is a real severe and growing problem?

A. Yes. I used those terms. (TE, Vol. III, Scott Rubin testimony, p. 234).

The Company's Water for Life program was only able to assist 87 families with their water bills during the fiscal year ending June 30, 2004, due to lack of funds. Many senior citizens

and others on fixed incomes, especially those who have encountered large medical expenses, will have to stretch resources and make choices about which basic needs to meet. This stress will serve as a significant barrier to self-sufficiency. For those who have had success in increasing their incomes, water rate and fee escalations represent a step backward. For these reasons approval of the proposed low-income program by the Commission is vital to approval of a rate increase of any size for the Company in this proceeding.

ARGUMENT

I. The Proposed Low-Income Discount Program does not Give an Unreasonable Preference or Advantage to any Person or Subject any Person to an Unreasonable Prejudice or Disadvantage.

KRS 278.170 governs what constitutes discrimination as to rates or service. In pertinent part, the statute reads as follows:

- (1) No utility shall, as to rates or service, give any **unreasonable** preference or advantage to any person or subject any person to any **unreasonable** prejudice or disadvantage, or establish or maintain any **unreasonable** difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.
- (2) Any utility may grant free or reduced rate service . . . for the purpose of providing relief in case of flood, epidemic, pestilence, **or other calamity**.
- . . .
- (4) **The commission may determine any question of fact arising under this section.** (Emphasis added).

A simple interpretation of the above quoted statute is: a utility may grant **reasonable** preferences or advantages to persons within the same class, even if the service provided is substantially the same. Based upon the facts, it is the Commission who determines whether an

advantage is reasonable or unreasonable.

On the other hand, the Attorney General takes the position that it is an absolute violation of this principle as a matter of law, and therefore constitutes an unreasonable preference or advantage under the statute, for the Commission to approve the low-income discount program. By the Attorney General's reckoning, there is no reasonable difference in providing water service to two households, side by side, in one of which resides a family living below the federal poverty level and in the other of which resides an affluent family. Therefore, the Attorney General concludes that the Company may not offer, and the Commission may not approve, as a matter of law, a program designed to provide relief to the poor by providing low-income households with a lower rate for water service.

In reaching this conclusion, however, the Attorney General must ignore the testimony of its own witness at the hearing - Scott Rubin. Mr. Rubin was asked by Mr. Spenard of the Attorney General's office if there was any difference in levels of service between providing water service to two households side-by-side, in one of which lived a low-income family, and in the other of which lived an affluent family. Mr. Rubin responded, ". . . the only thing I can think of that might result in a difference in cost is if there were a substantial difference in billing and collection costs. I know there has been some discussion of that here . . . [t]here may be a cost difference on the billing and collection side." On re-cross examination, Mr. Rubin went further:

Q. You were asked by Mr. Spenard in redirect, if a person can't pay their water bill, the result would be that their water would be shut off, I believe you said. Isn't it true that that would necessitate reconnect fees, arrearages, and collection costs to the company?

A. Yes.

Q. And you went ahead, I believe, and said that that, in fact, may provide a difference between two like households side-by-side where one is a low-income household, the other is not. The low-income household, in fact, may cost the company more in collection fees; true?”

A. That’s very possible; yes. (TE, Vol. III, Scott Rubin testimony, pp. 247-248, 251).

In his direct testimony, Mr. Rubin, in discussing the impact of the activation fee on low-income customers, stated that low-income households were “almost twice as likely to move during a year than (sic) higher-income households . . . (and) it appears that the fee would fall most heavily on those who can least afford to pay it . . .” (Rubin direct testimony, p. 13; emphasis in original, clarification added). Taken together, Mr. Rubin’s direct testimony and his testimony at the hearing clearly demonstrate that there certainly is a reasonable basis upon which to grant a reasonable preference or advantage to low-income customers of the Company. First, the advantage is reasonable since it constitutes only 0.3 of 1% (.003) of the overall rate increase sought, yet is likely to reduce reconnection and collection costs to the company. Second, it is reasonable to give this small advantage to low-income customers since they are twice as likely as the more affluent customers to move during any given year and therefore incur the activation fee imposed by this tariff.

In cross-examination by Mr. Ingram, Mr. Rubin was asked if he agreed with the statement that, “[D]ifficulty to pay bills involves increased arrearages at the water company, late payments, disconnection notices, service terminations, attendant collection costs, and write-offs,” to which the witness simply replied, “Yes, that all sounds reasonable.” Finally, Mr. Rubin suggests in his testimony that the M1 Manual, which he cites repeatedly, states that a utility has the option to offset a regressive activation fee by offering a low-income discount (TE, Vol. III, Scott Rubin

testimony, pp. 214-216).

In this case, the Attorney General takes the position that while it is reasonable to provide a different rate to residential ratepayers who require different levels of service, it is not reasonable to provide a different rate to low-income customers, who admittedly also require a different level of service.² This argument is baseless and inconsistent and should be rejected by the Commission.

Furthermore, subsection (2) of KRS 278.170 provides a distinct justification for the Commission's approval of the low-income discount program offered by the Company. In pertinent part, that statute provides: "Any utility may grant free or reduced rate service . . . for the purpose of providing relief in case of flood, epidemic, pestilence, **or other calamity.**" (Emphasis added). Calamity is defined as "**1. A disaster. 2. Dire distress.**"³ The Commission may reasonably find that from the evidence that rising utility costs, particularly the increased rates and fees proposed in this case, place those living below the federal poverty level in "dire distress," justifying relief. The use of the phrase "or other calamity" indicates that the Legislature was giving the Commission wide latitude in interpreting and applying this statute.

In *National-Southwire Aluminum Company et al. v. Big Rivers Electric Corp.*, Ky. App., 785 S.W.2d 503 (1990), the Court held that a variable rate approved by the Commission, which

²The AG refers to "elevated service area" as an example of a permissible distinction in terms of rates. The AG makes the argument that the cost of additional pump stations to serve this (geographically) elevated service area makes the imposition of a different rate reasonable. Mr. Rubin agrees with this example; however, the witness goes on to note that low-income customers, like those in "elevated service areas," also require a different level of service (TE, Vol. III, Scott Rubin testimony, pp. 246-248).

³New College Edition, The American Heritage Dictionary of the English Language, Houghton Mifflin, 1981.

applied to only two customers of the utility, was not unreasonable and did not violate KRS 278.170(1). In that case, the Commission was faced with a complex record involving the insolvency of Big Rivers and the need to set rates for the two largest customers of the utility, the aluminum smelters who ultimately challenged the rates imposed. In affirming the Commission, the Court stated: “Even if some discrimination actually exists, Kentucky law does not prohibit it *per se*. . . . We only prohibit ‘unreasonable prejudice or disadvantage’ or an ‘unreasonable difference.’” *Id.*, at 514. Accord: *Louisville & Jefferson County Met. Swr. Dist. v. Joseph E. Seagram & Sons*, 307 Ky. 413, 211 S.W.2d 122, 125 (1948)(“if the validity of the Board’s action be fairly debatable its judgment must be allowed to prevail against the objection that the classification is discriminatory”). In *National-Southwire Aluminum, supra*, the Court went further, stating: “The PSC, likewise, has legislative and administrative discretion.” 785 S.W.2d 503, at 515.

If an exclusive rate for two industrial customers, which did not apply to the utility’s other industrial customers, was not unreasonable under KRS 278.170(1), then it is clear that a separate rate for the many low-income customers of the Company is not unreasonable. There exists a logical basis on which to approve the low-income discount as a **reasonable** advantage. First, the discount will assist low-income customers in paying their water bills, which will accrue to the benefit of all of the Company’s customers. Second, the company will incur fewer reconnection and collection costs. Finally, the company will suffer less bad debt write-off.

The differences in services rendered by the company to its low-income customers as opposed to its other residential customers constitute more than sufficient grounds for the Commission to conclude that there is not an **unreasonable** preference or advantage as a result of

the proposed low-income discount program. The Company, CAC, and the Attorney General's own witness, Scott Rubin, apparently concur on this point.

II. It Is in the Public Interest for the Commission to Approve the Low-income Discount.

In addition to benefitting the low-income customers, the proposed low-income discount also benefits the other customers of the Company. Utility low-income assistance programs in general have been found to help utilities reduce bad debt write-off and save on the costs associated with disconnects and reconnects. These savings accrue to all of the Company's customers (Burch testimony, p. 8). The overall rate increase sought by the Company in this proceeding is approximately \$7.3 million. The cost of the proposed low-income program has been estimated by the Company at \$30,000, representing approximately 0.3 of 1% (.003) of the overall rate increase (Transcript of Evidence, hereinafter "TE," Vol. IV, Crane testimony, p. 52). The cost to the non low-income customers of the Company is approximately 2.5 cents per month. A similar low-income discount program has been approved for the Company's sister company in Pennsylvania and similar low-income discount programs have been requested by the Company's sister companies in West Virginia and Tennessee (TE, Vol. III, Miller testimony, pp. 20, 22).

It is certainly in the public interest to afford relief to those persons who are in dire need of assistance in order to pay their water bills, since provision of water is a basic necessity in today's society. Kentucky should step in line with our sister states and grant the Company's request to offer the low-income discount as part of its overall rate increase.

As a public utility with a monopoly, the Company has an obligation to its low-income customers since the Company is the only choice its customers have for essential water service.

Through the low-income discount proposed in this case, the Company is attempting to meet that obligation. While CAC would prefer a much more substantial program to assist the Company's low-income customers with paying their water bills, this discount is certainly a step in the right direction, and should be approved by the Commission.

CONCLUSION

For all of the foregoing reasons, CAC respectfully requests the Commission to set fair, just and reasonable rates in this proceeding and to specifically approve the Company's low-income discount program as part of the overall order in this case.

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document has been served on the following persons:

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on this the 4th day of January, 2005.

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