

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)

**APPLICATION FOR REHEARING BY
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 pursuant to KRS 278.400, applies to the Commission rehearing of its Order of February 28, 2005 (the “Order”).

In particular, CAC urges the Commission to reconsider its denial of the low-income water discount proposed by KAWC. 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 undisputed that the rate increase will fall most heavily on those least able to afford water. (*Cf.* TE, Vol. III, Scott Rubin testimony, p. 234).

It is respectfully submitted that the Commission erred in determining that the proposed program was unlawful under KRS 278.170. That statute 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).

The Commission should have determined that the propped advantage for low-income customers is reasonable given the large cost imposed on the company by disconnections and collection costs, and the likelihood that the program will help reduce those costs. The Attorney General's own witness affirmed this:

- 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 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 *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 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.

For all of the foregoing reasons, CAC respectfully requests the Commission to rehear this matter and conclude that the proposed low-income water discount is a reasonable preference under KRS 278.170 and approve said program.

/s/ Joe F. Childers
JOE F. CHILDERS
201 W. Short Street
Suite 310
Lexington, KY. 40507
(859) 253-9824

ATTORNEY FOR CAC

CERTIFICATE OF SERVICE

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

Coleman D. Bush
Director Business Development
Kentucky-American Water Co.
2300 Richmond Road
Lexington, KY 40502

Roy L. Ferrell
W.Va.-American Water Co.
1600 Pennsylvania Avenue
Charleston, WV 25302

Lindsey W. Ingram, III, Esq.
Stoll, Keenon & Park
300 W. Vine Street
Suite 2100
Lexington, KY 40507

Lindsey W. Ingram, Jr., Esq.
Stoll, Keenon & Park
300 W. Vine Street
Suite 2100
Lexington, KY 40507

Michael A. Miller
W.Va.-American Water Co.
1600 Pennsylvania Avenue
Charleston, WV 25302

Nick Rowe, President
Kentucky-American Water Co.
2300 Richmond Road
Lexington, KY 40502

David Spenard, Esq.
Assistant Attorney General
1024 Capital Center Drive
Suite 200
Frankfort, KY 40601-8204

David J. Barberie, Esq.
Lexington-Fayette Urban Co. Government
Department of Law
200 East Main Street
Lexington, KY 40507

on this the 23rd day of March, 2005.

/s/ Joe F. Childers
JOE F. CHILDERS