

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

**LEXINGTON-FAYETTE URBAN COUNTY  
GOVERNMENT'S RESPONSE TO KENTUCKY-AMERICAN WATER  
COMPANY'S PETITION AND AMENDED PETITION FOR REHEARING**

Comes now the Lexington-Fayette Urban County Government (the "LFUCG"), by counsel, and files its response to Kentucky-American Water Company's ("Kentucky-American" or the "Company") Petition and Amended Petition for Rehearing, both filed on or about March 21, 2005.

Kentucky-American has requested that the Commission reconsider a number of issues related to its February 28, 2005 Order (the "Order"), including those related to the company's proposed deferred debits for security costs, its shared services center and customer call center, and the treatment of its consolidated taxes. Simply put, there is no legal or factual basis for the Commission to grant Kentucky-American any additional relief in this case. The Commission correctly denied the proposed deferred debit treatment in each instance, and indeed, as further argued below, it has additional grounds to deny the company's petitions other than those stated in the Order. The Commission's treatment of Kentucky-American's consolidated tax return was also correct. Therefore, the company's petitions should be denied.

## A. Deferred Debits

The Commission was correct in denying the deferred debit treatment and ratemaking recovery for security costs as requested in this proceeding. The company has added nothing new to the argument. The Commission's merger condition on security cost recovery was clear. Kentucky-American's continued attempt to interpret this condition (to which it voluntarily agreed in return for approval of its merger request) to its advantage should be summarily rejected.

Further, the company's continuing effort to recover these costs based upon its intention (apparently only made known to a single employee at the Commission), to interpret this condition in such a way as to make it meaningless -- even as the merger proceeding was pending -- should be of grave concern to the Commission and to the other parties to these proceedings.

The LFUCG therefore renews its objection to this proposed deferred debit and the other proposed deferred debits because the company also failed to follow the Commission's specific instruction in Case No. 2000-00120 to file a "formal application" **prior** to accruing costs.<sup>1</sup> Kentucky-American's failure to follow the Commission's regulations as to the content of a formal application should not be excused for any of the requested deferred debits.

A letter to the Executive Director of the Commission does not constitute a "formal application" to the Commission, and unless the Commission intends to implement a rule to so state, this failure of a sophisticated and well represented

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<sup>1</sup> The LFUCG's Brief discussed these issues, and is hereby incorporated by reference.

company to follow the Commission's regulations should not be blithely excused as a matter of no consequence.

Kentucky-American failed to follow the Commission's Order in Case No. 2000-00120, and the Commission's regulations with respect to the form and content of Applications for all of these proposed accruals, and this failure constitutes an additional independent ground to reject the Company's proposed treatment of the deferred debits in this case.

**B. Consolidated Tax Return**

The Commission made the correct determination with respect to the reduction of federal tax expense based on a consolidated income tax adjustment. The petition for rehearing does not state sufficient grounds for reversal of the determination or reconsideration of the issue.

**C. Conclusion**

Kentucky-American has failed to provide a sufficient basis as to why it is entitled to any further rate relief in this case, therefore its Petition and Amended Petition for Rehearing should be denied. The Commission has already provided ample reasoning justifying the denial of these renewed requests. In addition, there are other reasons, which have previously been offered in this case, as to why it would be inappropriate to grant Kentucky-American any further relief on Application.

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 28th day of March 2005:

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