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COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

APR 27 2004

PUBLIC SERVICE  
COMMISSION

In the Matter of:

ADJUSTMENT OF RATES OF KENTUCKY- ) Case No. 2004-00103  
AMERICAN WATER COMPANY )

Attorney General's Notice  
Regarding 807 KAR 5:001 and  
Objection/Motion Regarding Service of Documents

with

Attorney General's Notice  
Regarding Non-Waiver of KRS 278.380.

The Attorney General gives notice of his objection to the portion of the Commission's 22 April 2004 Order of procedure that eliminates the regulatory requirement that documents and pleadings filed with the Commission be served upon all parties in paper medium. He moves for an Order requiring service of documents and pleadings to him in paper medium (in addition to service by electronic means). Further, the Attorney General gives notice that he does not waive any right to service of Commission Orders by United States mail. In support, he notes the following:

## **Objection/Motion Regarding Service of Documents**

807 KAR 5:001 requires the submission of documents in paper medium. The Attorney General has been a participant in several cases in which the submission of documents and pleadings has also been done through electronic means.<sup>1</sup> A review of the relevant orders of procedure from the cases readily indicates that the process continues to evolve and is not yet mature. Further, evidence of the preliminary nature of the electronic filing process includes the fact that the Commission has yet to promulgate an administrative regulation and formally adopt a policy for electronic filings.

Following participation in other “electronic” filing cases - including Case No. 2003-00034, a review of the 22 April 2004 Order of procedure in this case, and consideration of his circumstances, the Attorney General requests that the Commission enter an Order requiring service of documents and pleadings to him in paper medium as well as by electronic means. The lack of service through traditional “paper” means is a deviation from prior practice, and it presents significant hardships and risks to the Office of the Attorney General.

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<sup>1</sup> Without full citation, the cases include, Case No. 97-034 (perhaps the first “electronic” case filing); Case No. 2000-00120; Case No. 2001-117; Case No. 2002-00018; Case No. 2002-00227; Case No. 2002-00317. All of the prior cases concern the Kentucky-American Water Company, and the protocol for each required service in paper medium. See, for example, Case No. 2000-00120, Order, 24 April 2000, Item 12, page 4. Additionally, the Attorney General was a participant in Case No. 2003-00034 (an application by the Ohio County Water District) – an electronic case using the “new” protocol. In Case No. 2003-00034, service in paper medium was not required.

While the electronic submission and service of documents and pleadings may permit the Commission to have a more efficient and thorough review of the Kentucky-American application, the Attorney General does not agree with the Commission's finding that the elimination of service in paper medium will reduce the costs associated with his review of the application or that it will allow the Attorney General a more efficient and thorough review.

Significant difficulties with the electronic filing process continue. For example, a recent filing in Case No. 2002-00277 was problematic. The Office of the Attorney General was unable to access certain documents via the Commission's website due to a technical problem with the site, and the receipt of certain documents "overloaded" the mailboxes for Attorney General's recipients. Delays and problems with management of the electronic documents pose a significant risk and hardship to the Office given the relatively short "turn around" times associated with rate case reviews.

The Attorney General has yet to see the application or retain experts for review of the application. He is unable to conclude that lack of service in paper medium results in no prejudice to him. While the Attorney General is able to participate via electronic means (as he has done on numerous previous occasions), the Attorney General seeks to avoid risks and undue hardships relating to his experts that may result from the deviation from the traditional means of service.

The Attorney General has been a participant in electronic cases in which documents and pleadings were also served in a paper medium, and he has been a participant in a case under the “new” protocol (which is actually an informal policy for applicants who seek to deviate from the Commission’s regulations). Overall, the submission and receipt of such items as data requests in electronic format has been of assistance to the Attorney General. He does not object to electronic filing in tandem with filing in paper medium.

Nonetheless, for the Attorney General – who unlike the Commission will receive no hardcopy of the materials,<sup>2</sup> the new protocol for service is simply not as favorable as the traditional service requirement. For the Attorney General, the all electronic filing protocol of Case No. 2003-00034 was not an improvement over the protocol for Case No. 2000-00120.

Thus, for these reasons, the Attorney General submits that good cause exists to allow him to participate through the traditional means in tandem with the electronic filing procedures. He asks for a Commission Order indicating the following:

Any document or pleading filed with the Commission shall continue to be served upon the Attorney General in paper medium. Service of any document or

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<sup>2</sup> In Case No. 2002-00018, one electronic filing did not match the hard copy. As long as the hard copy is the official record for the proceedings (including use in judicial proceedings), the Attorney General should not have to accept risk associated with variances between the official record and the electronic copy. (For example, the protocol certification for matching does not eliminate the risk of variance due to error.) Absent a page-by-page, line-by-line comparison of the electronic version and the official copy (which would be quite time consuming), a party that does not receive a hard copy must bear the risk of a variance. The requirement in the absence of a formal policy is unreasonable.

pleading on him shall be made in accordance with Administrative Regulation 807 KAR 5:001, Section 3(7), and Kentucky Civil Rule 5.02.

**Non-Waiver of KRS 278.380**

While the Commission has yet to grant the Attorney General's Motion to Intervene, he provides notice that he does not waive any right to receive service of Commission Orders by United States mail.

WHEREFORE, the Attorney General submits his notice of his objection to the portion of the Commission's 22 April 2004 Order of procedure that eliminates the regulatory requirement that documents and pleadings filed with the Commission be served upon all parties in paper medium. He moves for an Order requiring service of documents and pleadings to him in paper medium (in addition to service by electronic means). Further, the Attorney General gives notice that he does not waive any right to service of Commission Orders by United States mail.

Respectfully submitted,

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*Certificate of Service and Filing*

Counsel certifies that an original and ten photocopies of this pleading were served and filed by hand delivery to Thomas M. Dorman, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; furthermore, it was served by mailing a true and correct of the same, first class postage prepaid, to Leslye M. Bowman, David J. Barberie, Lexington-Fayette Urban County Government, Department of Law, 200 East Main Street, Lexington, Kentucky 40507; Lindsey W. Ingram, Jr., Stoll, Keenon & Park, LLP, 300 West Vine Street, Suite 2100, Lexington, Kentucky 40507-1801, and Roy W. Mundy II, Kentucky-American Water Company, 2300 Richmond Road, Lexington, Kentucky 40502, all on this 27<sup>th</sup> day of April 2004.

  
Assistant Attorney General