

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE JOINT PETITION OF KENTUCKY-AMERICAN)
WATER COMPANY, THAMES WATER AQUA) Case No. 2006-00197
HOLDINGS GMBH, RWE AKTIENGESELLSCHAFT)
THAMES WATER AQUA US HOLDINGS, INC.,)
AND AMERICAN WATER WORKS COMPANY,)
INC. FOR APPROVAL OF A CHANGE IN CONTROL)
OF KENTUCKY-AMERICAN WATER COMPANY)

ATTORNEY GENERAL'S MOTION FOR AN ORDER
ESTABLISHING THE CRITERIA FOR THE PROCEEDING

With

MOTION TO AMEND
THE PROCEDURAL SCHEDULE

The Attorney General, through counsel in his Office of Rate Intervention, moves the Commission for an Order that establishes the decisional criteria applicable to this proceeding. In support, the Attorney General states that without notice of the criteria which the Commission will apply for its consideration of this transaction, he will be unduly prejudiced and there will be impairment to his opportunity to be heard. He further moves for an amendment to the procedural schedule. In support of his motions, the Attorney General states the following.

On 19 June 2006, the Commission entered an Order wherein it states that "determining whether Section 5 or section of 6 of KRS 278.020 is controlling

presents an issue that should be addressed before any ultimate decision regarding the scheduling of this matter.”¹ The Attorney General agrees; however, he further asserts that this issue should be addressed prior to the filing of the intervenors’ testimony and the evidentiary hearing.

In response to the June 19th Order (which requires the parties to file written memoranda addressing the issue whether KRS 278.020(5) and/or KRS 278.020(6) should apply to this case), the parties fully-briefed this issue. Thus, the parties have complied with the Commission’s instructions, and the issue is ripe for determination. The Commission has yet to rule on this issue, and it is not clear that that the Commission intends to issue an Order on this matter in advance of the due date for intervenor testimony or the public hearing.

The criteria that the Commission will apply in order to reach its conclusions or determination of this matter is the starting point for advocacy. Notice of the applicable criteria is essential for proper development of the Attorney General’s case. The absence of notice setting forth the criteria for this proceeding does, in fact, impair the Attorney General’s advocacy including prejudice to his preparation of testimony for the public hearing as well as his preparation for the public hearing itself. Accordingly, the Attorney General requests that the Commission enter an Order that establishes the criteria that the Commission will apply to the facts of this case in order to reach its decision.

¹ Order, page 2.

Further, consistent with his prior advocacy on this point, the Attorney General submits that the facts of this case have yet to trigger (or otherwise activate) the provisions of KRS 278.020 (6). The Commission, while under a duty to process this application within a reasonable amount of time, is not under the deadline that is applicable to transactions falling under the scope of Subsection 6.

The Commission should amend the procedural schedule to afford for the completion of discovery (including the resolution of matters relating to the Joint Petitioners' claims of confidentiality and of exclusion) prior to the filing of testimony by the intervenors. The commencement of the public hearing should also be rescheduled accordingly. Intervenor testimony following the completion of discovery in tandem with clear notice of the decisional criteria for this proceeding provide the opportunity for a much more efficient and meaningful public hearing which will aid in the Commission's consideration of this matter.

WHEREFORE, the Attorney General respectfully requests the Commission provide notice of the decisional criteria for this proceeding and amend the procedural schedule in this case.

Respectfully submitted,

GREGORY D. STUMBO
ATTORNEY GENERAL
/s/ David Edward Spenard
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Notice of Filing

Counsel gives notice that (pursuant to Instruction 1 of the Commission's 5 June 2006, Order of procedure) the original and one photocopy in paper medium of the filing by hand delivery to Beth O'Donnell, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601 on 8 August 2006. Further, one copy in electronic medium has been filed by uploading the filing to the file transfer protocol site designated by the Executive Director on this 7th day of August 2006.

/s/ David Edward Spenard
Assistant Attorney General

Instruction 6 Certification

Per Instructions 6 of the 5 June 2006, Order of procedure, counsel certifies that the electronic version is a true and accurate copy of the document filed in paper medium, a copy in paper medium has been served on all the parties of record, the electronic version has been transmitted to the Commission, and the Commission and other parties have been notified by electronic mail (on 7 August 2006) that the electronic version has been transmitted to the Commission.

/s/ David Edward Spenard
Assistant Attorney General

Certificate of Service

Counsel certifies that this response has been served by mailing a true and correct photocopy of the same, first class postage prepaid, to Lindsey W. Ingram, Jr., Lindsey W. Ingram III, Stoll Keenon Ogden, 300 West Vine Street, Suite 2100, Lexington, Kentucky 40507-1801; Foster Ockerman, Jr., Martin, Ockerman & Brabant, 200 N. Upper Street, Lexington, Kentucky 40507; Anthony G. Martin, P. O. Box 1812, Lexington, Kentucky 40588; and Leslye M. Bowman, David Barberie, Lexington-Fayette Urban County Government, Department of Law, 200 East Main Street, Lexington, Kentucky 40507 all on this 7th day of August 2006.

/s/ David Edward Spenard