

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**IN THE MATTER OF:**

<b>KENTUCKY-AMERICAN WATER</b>	)	
<b>COMPANY'S REQUEST FOR</b>	)	<b>CASE NO. 2009-00359</b>
<b>APPROVAL OF PAYMENT OF DIVIDEND</b>	)	

**KENTUCKY-AMERICAN WATER COMPANY'S**  
**RESPONSE TO THE COMMISSION'S MAY 14, 2010 ORDER**

Kentucky-American Water Company ("KAW") proposes the following settlement to the Commission to fully and finally resolve its omission in failing to seek Commission approval prior to paying dividends on common stock on March 31, 2009 and June 30, 2009. Although the omission was an innocent mistake and the goal of the now-terminated Condition No. 32 was met in all respects, KAW recognizes its failure to adhere to the Condition, and, therefore, proposes a resolution of this matter by which it: (1) recognizes and takes responsibility for its error; (2) makes a penalty payment in the range of \$5,000 to \$10,000 as determined by the Commission; and (3) commits that it will not seek rate recovery for the costs, fees and penalty payment related to the error.

The Commission's May 14, 2010 Order raises the possibility of a penalty higher than the \$5,000 maximum amount that may be imposed upon KAW by law pursuant to KRS 278.990 based on the statement that failure to comply with Condition No. 32 can be imputed to all five Joint Applicants in Case No. 2002-00317. In the interest of ending this matter, KAW makes this range offer with the upper limit of \$10,000 based on the Commission's statement that American Water Works Company, Inc. ("AWW") and KAW are the "primary actors" in issuing dividends.

Even though KAW is offering to pay a penalty in the range of \$5,000 to \$10,000, the facts dictate that a penalty of \$5,000 at the bottom of the range is appropriate because AWW had nothing to do with the mistake. It is true that the dividends in question were paid to AWW. However, KAW is the only entity that made the innocent mistake at issue. No other Joint Applicant, including AWW, made the mistake. KAW, and KAW alone, was responsible for declaring and paying the dividends at issue. No other entity should suffer from KAW's mistake in violating a condition that no longer exists. KAW's offer is more than enough to guard against the concerns expressed in the Commission's May 14, 2010 Order. For these reasons and all the reasons set forth in KAW's October 27, 2009 filing in this matter, the Commission should accept a total penalty payment of \$5,000 as a complete resolution of this matter.

Finally, with all due respect, KAW disagrees with the Commission's characterization that KAW did not self-report its mistake. Within a few days after realizing its mistake and in the first page of the first document<sup>1</sup> KAW filed with the Commission after that realization (and before anyone at the Commission had any notion of the mistake), KAW specifically acknowledged that it failed to seek Commission approval of the dividend payments in question. Indeed, the Attorney General agrees that KAW self-reported and that this was an innocent mistake.<sup>2</sup>

Respectfully submitted,

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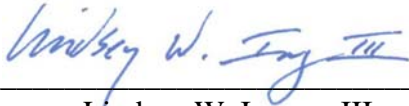
and

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<sup>1</sup> See KAW's September 4, 2009 Request in this case.

<sup>2</sup> See the Attorney General's October 30, 2009 response in this case.

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**CERTIFICATION**

This is to certify that an original and one copy of the foregoing will be filed at the Public Service Commission on June 2, 2010 in paper medium, that the electronic version of this document is a true and accurate copy of the document that will be filed in paper medium, that that the electronic version of this document has been electronically transmitted to the Commission, and that notification of that transmission has been made to the following on this 2<sup>nd</sup> day of June, 2010:

David Edward Spenard  
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BY:   
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