

Commonwealth of Kentucky
Before the Public Service Commission

In the Matter of:

KENTUCKY-AMERICAN WATER COMPANY'S)
REQUEST FOR APPROVAL OF PAYMENT) Case No. 2009-00359
OF DIVIDEND)

ATTORNEY GENERAL'S RESPONSE
TO KENTUCKY-AMERICAN WATER COMPANY'S
PROPOSED SETTLEMENT

The Attorney General submits this Response to Kentucky-American Water Company's Proposed Settlement regarding KAWC's failure to seek Public Service Commission approval prior to paying dividends on common stock on 31 March 2009 and 30 June 2009.

Kentucky-American Water self-reported the failure to comply with a Commission Order relating to two dividend payments. Kentucky-American Water does not contest the applicability of or liability under KRS 278.990 for these events. In an effort to resolve this matter without additional litigation, the Company has tendered a settlement proposal.

As noted, Kentucky-American Water does not contest liability under KRS 278.990. With regard to the failures to comply, the Attorney General notes that the failures do not appear to have any basis in bad faith. The Attorney General is willing to stipulate that each failure was an "innocent" mistake.

As part of the Proposed Settlement, Kentucky-American Water indicates that it has implemented additional safeguards for compliance with Condition No. 32 of the Commission's 20 December 2002 Order in Case No. 2002-00317. The safeguards are logical and comprehensive. The Attorney General does not offer or suggest other measures because it appears that the procedures outlined in Kentucky-American Water's settlement proposal are adequate.

With regard to the penalty payment, the range specified by KRS 278.990 is, for each offense, "not less than twenty-five dollars (\$25) nor more than two thousand five hundred dollars (\$2,500)." Rather than recommending a specific dollar amount, the Attorney General asks that the Commission consider the following principles as it exercises its discretion in determining the appropriate penalty amount.

A penalty for failing to comply with a Commission Order should constitute more than a perfunctory gesture. To this end, the amount chosen should clearly reflect that the penalty is meaningful. Nonetheless, the concepts of mitigation and proportionality have application to KRS 278.990.

It is appropriate to take into consideration the fact that Kentucky-American Company self-reported, within a reasonable time, the lack of compliance. Without adopting the position that self-reporting, of itself, is necessarily a mitigating factor, the Attorney General notes that in this instance the self-reporting was within a reasonable amount of time. Imposition of the maximum penalty, therefore, could therefore serve as a disincentive to report.

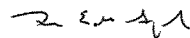
Additionally, because KRS 278.990 contains a range, the statute reflects a legislative intent to allow the imposition of different penalty amounts (within the range). Nevertheless, the process for assessing penalties should include consideration of the issue of whether the amount is proportionate relative to other penalties that the Commission has assessed for comparable conduct.

Finally, Kentucky-American Water indicates that it takes responsibility for the failure to comply, and it commits that it will not seek rate recovery for the costs, fees, and penalty payment related to the error. In view of Kentucky-American Water's self-reporting, remedial steps, and action to take responsibility for the error, the Attorney General has no objection to the Proposed Settlement and asks the Commission take into consideration the Attorney General's suggestions for determining a penalty amount.

WHEREFORE, the Attorney General submits this Response.

Respectfully submitted,

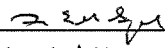
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Certificate of Service and Filing

Counsel certifies that the original and one photocopy of this Response were filed by hand delivery to Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601. A true and correct copy of the Response in electronic format was uploaded to the Commission's website. Furthermore, the response was served (with notification of the Commission filing) by electronic transmission of a true and correct copy of the same in electronic format to Lindsey W. Ingram III, Stoll Keenon Ogden PLLC, 300 West Vine Street, Suite 2100, Lexington, Kentucky 40507-1801 (L.Ingram@skofirm.com), and A.W. Turner, Jr., Kentucky-American Water Company, 2300 Richmond Road, Lexington, Kentucky 40502 (A.Turner@amwater.com). Filing and service took place on this 30th day of October, 2009.



Assistant Attorney General