

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF KENTUCKY-AMERICAN )  
WATER COMPANY FOR AN ADJUSTMENT OF ) CASE NO. 2010-00036  
RATES ON OR AFTER MARCH 28, 2010 )

**LEXINGTON-FAYETTE URBAN COUNTY  
GOVERNMENT'S RESPONSES TO DATA REQUESTS OF  
KENTUCKY-AMERICAN WATER COMPANY**

Comes now the Lexington-Fayette Urban County Government ("Lexington"), by counsel and submits the following responses to the data requests of Kentucky-American Water Company.

Respectfully submitted,

BY:



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**FILING NOTICE AND CERTIFICATE**

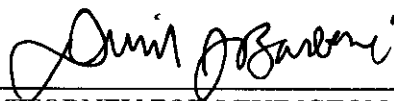
In accordance with Ordering Paragraph No. 5 of the Commission's February 16, 2010 Order, this is to certify that Lexington-Fayette Urban County Government's July 9, 2010 electronic filing of these data requests is a true and accurate copy of the documents to be filed in paper medium; that the electronic filing has been transmitted to the Commission on July 9, 2010; that an original and one copy of the filing will be delivered to the Commission on July 9, 2010; and that, on July 9, 2010, notification of the electronic filing will be provided to the Commission and the following via electronic mail:

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ATTORNEY FOR LEXINGTON-FAYETTE  
URBAN COUNTY GOVERNMENT

**Lexington-Fayette Urban County Government's Responses  
to Data Requests of Kentucky-American Water Company  
Case No. 2010-00036**

**WITNESS RESPONSIBLE:**

Richard A. Baudino  
Counsel

1. Please provide all Excel files prepared, relied on or used by Mr. Baudino in the preparation of his testimony, including but not limited to, Excel files related to his Exhibits 2, 4, 5, 6, 7, 8 and 9.

**RESPONSE:**

The spreadsheet files used by Mr. Baudino are attached as Exhibits RAB-2 and RAB-4 (electronic files lfc\_rkaw\_ex1\_070910 and lfc\_rkaw\_ex2\_070910). Mr. Baudino did not provide a spreadsheet that was downloaded from Value Line that contained the Summary Statistics he used in his CAPM analysis because this material is protected by copyright.

**KENTUCKY AMERICAN WATER COMPANY  
WATER UTILITY COMPARISON GROUP  
AVERAGE PRICE, DIVIDEND AND DIVIDEND YIELD**

		May-10	Apr-10	Mar-10	Feb-10	Jan-10	Dec-09
<b>American States Water</b>	High Price (\$)	39.440	39.610	35.310	33.670	36.420	36.860
	Low Price (\$)	32.610	34.790	32.140	31.200	33.010	32.790
	Avg. Price (\$)	36.025	37.200	33.725	32.435	34.715	34.825
	Dividend (\$)	0.260	0.260	0.260	0.260	0.260	0.260
	Mo. Avg. Div.	2.89%	2.80%	3.08%	3.21%	3.00%	2.99%
	6 mos. Avg.	2.99%					
<b>American Water Works</b>	High Price (\$)	22.130	22.220	22.390	23.000	23.770	23.030
	Low Price (\$)	19.410	20.750	20.390	21.200	21.390	21.340
	Avg. Price (\$)	20.770	21.485	21.390	22.100	22.580	22.185
	Dividend (\$)	0.210	0.210	0.210	0.210	0.210	0.210
	Mo. Avg. Div.	4.04%	3.91%	3.93%	3.80%	3.72%	3.79%
	6 mos. Avg.	3.86%					
<b>Aqua America</b>	High Price (\$)	18.730	18.640	17.730	17.570	17.880	17.890
	Low Price (\$)	16.520	17.550	16.570	16.450	16.590	16.320
	Avg. Price (\$)	17.625	18.095	17.150	17.010	17.235	17.105
	Dividend (\$)	0.145	0.145	0.145	0.145	0.145	0.145
	Mo. Avg. Div.	3.29%	3.21%	3.38%	3.41%	3.37%	3.39%
	6 mos. Avg.	3.34%					
<b>California Water</b>	High Price (\$)	39.700	39.550	37.970	37.680	38.090	38.210
	Low Price (\$)	34.540	37.420	35.340	35.250	35.320	36.180
	Avg. Price (\$)	37.120	38.485	36.655	36.465	36.705	37.195
	Dividend (\$)	0.298	0.298	0.298	0.298	0.295	0.295
	Mo. Avg. Div.	3.21%	3.10%	3.25%	3.27%	3.21%	3.17%
	6 mos. Avg.	3.20%					
<b>Connecticut Water</b>	High Price (\$)	24.280	24.000	24.920	23.700	25.120	26.450
	Low Price (\$)	20.570	22.950	22.380	21.570	22.100	22.660
	Avg. Price (\$)	22.425	23.475	23.650	22.635	23.610	24.555
	Dividend (\$)	0.228	0.228	0.228	0.228	0.228	0.228
	Mo. Avg. Div.	4.07%	3.88%	3.86%	4.03%	3.86%	3.71%
	6 mos. Avg.	3.90%					
<b>Middlesex Water</b>	High Price (\$)	18.700	18.320	17.770	17.440	18.000	17.910
	Low Price (\$)	16.020	16.720	16.630	16.300	16.160	16.030
	Avg. Price (\$)	17.360	17.520	17.200	16.870	17.080	16.970
	Dividend (\$)	0.180	0.180	0.180	0.180	0.180	0.180
	Mo. Avg. Div.	4.15%	4.11%	4.19%	4.27%	4.22%	4.24%
	6 mos. Avg.	4.19%					

**KENTUCKY AMERICAN WATER COMPANY  
WATER UTILITY COMPARISON GROUP  
AVERAGE PRICE, DIVIDEND AND DIVIDEND YIELD**

		May-10	Apr-10	Mar-10	Feb-10	Jan-10	Dec-09
<b>Pennichuck Water</b>	High Price (\$)	24.410	23.500	23.510	21.100	21.520	24.500
	Low Price (\$)	21.120	22.200	20.490	19.000	19.700	20.440
	Avg. Price (\$)	22.765	22.850	22.000	20.050	20.610	22.470
	Dividend (\$)	0.180	0.180	0.180	0.180	0.175	0.175
	Mo. Avg. Div.	3.16%	3.15%	3.27%	3.59%	3.40%	3.12%
	6 mos. Avg.	3.28%					
<b>SJW Corp.</b>	High Price (\$)	28.190	28.240	26.430	22.750	23.950	22.970
	Low Price (\$)	23.170	24.990	22.070	21.600	21.930	21.020
	Avg. Price (\$)	25.680	26.615	24.250	22.175	22.940	21.995
	Dividend (\$)	0.170	0.170	0.170	0.170	0.165	0.165
	Mo. Avg. Div.	2.65%	2.55%	2.80%	3.07%	2.88%	3.00%
	6 mos. Avg.	2.83%					
<b>York Water Company</b>	High Price (\$)	14.450	14.240	14.340	14.080	15.000	15.240
	Low Price (\$)	12.830	13.600	13.560	13.040	13.040	14.210
	Avg. Price (\$)	13.640	13.920	13.950	13.560	14.020	14.725
	Dividend (\$)	0.128	0.128	0.128	0.128	0.128	0.128
	Mo. Avg. Div.	3.75%	3.68%	3.67%	3.78%	3.65%	3.48%
	6 mos. Avg.	3.67%					

**Average Dividend Yield** 3.47%

**Source: Yahoo! Finance**

**KENTUCKY AMERICAN WATER COMPANY  
WATER UTILITY COMPARISON GROUP  
DCF Growth Rate Analysis**

<u>Company</u>	(1) Value Line <u>DPS</u>	(2) Value Line <u>EPS</u>	(3) Value Line <u>B x R</u>	(4) <u>Zacks</u>	(5) Thomson <u>Financial</u>
American States Water	3.00%	6.50%	5.00%	4.00%	4.00%
American Water Works	4.05%	6.34%	2.50%	8.43%	10.25%
Aqua America	5.50%	11.50%	7.00%	7.33%	7.50%
California Water Service Group	1.00%	6.50%	6.00%	6.00%	5.55%
Connecticut Water Services	N/A	N/A	N/A	N/A	15.00%
Middlesex Water Company	N/A	N/A	N/A	N/A	8.00%
Pennichuck Corp.	N/A	N/A	N/A	N/A	9.00%
SJW Corp.	N/A	N/A	N/A	N/A	10.00%
York Water Company	N/A	N/A	N/A	N/A	6.00%
Averages excluding negative values	3.39%	7.71%	5.13%	6.44%	8.37%
Median Values	3.52%	6.50%	5.50%	6.67%	8.00%

**Sources: Zack's and First Call/Thomson Earnings Reports, retrieved May 28, 2010  
Value Line Investment Survey, April 23, 2010**

<b>Five-Year Historical Growth Rates</b>			
	<u>DPS</u>	<u>EPS</u>	<u>Book Value</u>
Connecticut Water Services	1.50%	-0.50%	3.00%
Middlesex Water Company	1.50%	3.50%	5.50%
Pennichuck Corp.	1.00%	1.00%	3.50%
SJW Corp.	5.50%	3.00%	8.00%
York Water Company	<u>6.00%</u>	<u>5.50%</u>	<u>8.50%</u>
Average excluding negative values	3.10%	3.25%	5.70%

**RETURN ON EQUITY CALCULATION  
WATER UTILITY COMPARISON GROUP**

	(1) Value Line <u>Dividend Gr.</u>	(2) Value Line <u>Earnings Gr.</u>	(3) Zack's <u>Earning Gr.</u>	(4) First Call <u>Earning Gr.</u>	(5) Average of <u>All Gr. Rates</u>
<b>Method 1:</b>					
Dividend Yield	3.47%	3.47%	3.47%	3.47%	3.47%
Growth Rate	3.39%	7.71%	6.44%	8.37%	6.48%
Expected Div. Yield	<u>3.53%</u>	<u>3.61%</u>	<u>3.59%</u>	<u>3.62%</u>	<u>3.59%</u>
<b>DCF Return on Equity</b>	<b>6.92%</b>	<b>11.32%</b>	<b>10.03%</b>	<b>11.99%</b>	<b>10.07%</b>
<b>Midpoint of Results</b>					<b>9.45%</b>
<b>Method 2:</b>					
Dividend Yield	3.47%	3.47%	3.47%	3.47%	3.47%
Median Growth Rate	3.52%	6.50%	6.67%	8.00%	6.17%
Expected Div. Yield	<u>3.54%</u>	<u>3.59%</u>	<u>3.59%</u>	<u>3.61%</u>	<u>3.58%</u>
<b>DCF Return on Equity</b>	<b>7.06%</b>	<b>10.09%</b>	<b>10.26%</b>	<b>11.61%</b>	<b>9.75%</b>
<b>Midpoint of Results</b>					<b>9.34%</b>

**KENTUCKY AMERICAN WATER COMPANY  
GAS DISTRIBUTION COMPANY COMPARISON GROUP  
AVERAGE PRICE, DIVIDEND AND DIVIDEND YIELD**

		May-10	Apr-10	Mar-10	Feb-10	Jan-10	Dec-09
<b>AGL Resources</b>	High Price (\$)	40.080	40.000	38.830	36.860	37.240	37.520
	Low Price (\$)	34.720	37.720	36.330	34.260	34.910	34.510
	Avg. Price (\$)	37.400	38.860	37.580	35.560	36.075	36.015
	Dividend (\$)	0.440	0.440	0.440	0.440	0.430	0.430
	Mo. Avg. Div.	4.71%	4.53%	4.68%	4.95%	4.77%	4.78%
	6 mos. Avg.	4.74%					
<b>Atmos Energy</b>	High Price (\$)	29.920	30.150	29.240	28.190	29.820	30.320
	Low Price (\$)	25.860	28.710	27.480	26.330	27.600	27.350
	Avg. Price (\$)	27.890	29.430	28.360	27.260	28.710	28.835
	Dividend (\$)	0.335	0.335	0.335	0.335	0.335	0.335
	Mo. Avg. Div.	4.80%	4.55%	4.72%	4.92%	4.67%	4.65%
	6 mos. Avg.	4.72%					
<b>LaCiede Gas</b>	High Price (\$)	35.890	35.420	34.630	33.730	34.500	34.920
	Low Price (\$)	32.050	33.710	32.880	30.810	31.990	31.400
	Avg. Price (\$)	33.970	34.565	33.755	32.270	33.245	33.160
	Dividend (\$)	0.395	0.395	0.395	0.395	0.395	0.395
	Mo. Avg. Div.	4.65%	4.57%	4.68%	4.90%	4.75%	4.76%
	6 mos. Avg.	4.72%					
<b>New Jersey Resources</b>	High Price (\$)	38.630	39.010	38.170	37.040	37.960	38.550
	Low Price (\$)	34.300	36.950	36.430	33.490	36.020	35.280
	Avg. Price (\$)	36.465	37.980	37.300	35.265	36.990	36.915
	Dividend (\$)	0.340	0.340	0.340	0.340	0.340	0.340
	Mo. Avg. Div.	3.73%	3.58%	3.65%	3.86%	3.68%	3.68%
	6 mos. Avg.	3.70%					
<b>Nicor Inc.</b>	High Price (\$)	43.710	44.700	43.750	41.890	42.830	43.390
	Low Price (\$)	38.630	41.860	41.820	37.990	40.000	39.280
	Avg. Price (\$)	41.170	43.280	42.785	39.940	41.415	41.335
	Dividend (\$)	0.465	0.465	0.465	0.465	0.465	0.465
	Mo. Avg. Div.	4.52%	4.30%	4.35%	4.66%	4.49%	4.50%
	6 mos. Avg.	4.47%					
<b>NiSource Inc.</b>	High Price (\$)	16.730	16.800	16.030	15.290	15.690	15.820
	Low Price (\$)	14.130	15.860	14.860	14.250	14.240	14.330
	Avg. Price (\$)	15.430	16.330	15.445	14.770	14.965	15.075
	Dividend (\$)	0.230	0.230	0.230	0.230	0.230	0.230
	Mo. Avg. Div.	5.96%	5.63%	5.96%	6.23%	6.15%	6.10%
	6 mos. Avg.	6.01%					



**KENTUCKY AMERICAN WATER COMPANY  
GAS DISTRIBUTION COMPANY COMPARISON GROUP  
AVERAGE PRICE, DIVIDEND AND DIVIDEND YIELD**

		May-10	Apr-10	Mar-10	Feb-10	Jan-10	Dec-09
<b>Northwest Natural Gas</b>	High Price (\$)	48.570	49.180	47.540	44.840	45.820	46.470
	Low Price (\$)	41.900	46.070	44.230	41.050	42.790	42.820
	Avg. Price (\$)	45.235	47.625	45.885	42.945	44.305	44.645
	Dividend (\$)	0.415	0.415	0.415	0.415	0.415	0.415
	Mo. Avg. Div.	3.67%	3.49%	3.62%	3.87%	3.75%	3.72%
	6 mos. Avg.	3.68%					
<b>Piedmont Natural Gas</b>	High Price (\$)	27.970	28.520	28.040	25.980	27.100	27.840
	Low Price (\$)	24.500	27.010	25.950	23.870	25.510	23.660
	Avg. Price (\$)	26.235	27.765	26.995	24.925	26.305	25.750
	Dividend (\$)	0.280	0.280	0.280	0.270	0.270	0.270
	Mo. Avg. Div.	4.27%	4.03%	4.15%	4.33%	4.11%	4.19%
	6 mos. Avg.	4.18%					
<b>South Jersey Industries</b>	High Price (\$)	45.840	46.000	42.500	40.500	39.250	40.240
	Low Price (\$)	41.170	41.980	39.630	37.190	37.390	36.090
	Avg. Price (\$)	43.505	43.990	41.065	38.845	38.320	38.165
	Dividend (\$)	0.330	0.330	0.330	0.330	0.330	0.330
	Mo. Avg. Div.	3.03%	3.00%	3.21%	3.40%	3.44%	3.46%
	6 mos. Avg.	3.26%					
<b>Southwest Gas</b>	High Price (\$)	32.910	32.580	30.700	28.820	29.400	29.480
	Low Price (\$)	28.120	30.060	28.830	26.280	27.600	26.330
	Avg. Price (\$)	30.515	31.320	29.765	27.550	28.500	27.905
	Dividend (\$)	0.250	0.238	0.238	0.238	0.238	0.238
	Mo. Avg. Div.	3.28%	3.04%	3.20%	3.46%	3.34%	3.41%
	6 mos. Avg.	3.29%					
<b>WGL</b>	High Price (\$)	36.570	36.120	35.020	33.340	34.070	34.580
	Low Price (\$)	33.000	34.330	32.880	31.000	31.630	31.430
	Avg. Price (\$)	34.785	35.225	33.950	32.170	32.850	33.005
	Dividend (\$)	0.378	0.378	0.368	0.368	0.368	0.368
	Mo. Avg. Div.	4.35%	4.29%	4.34%	4.58%	4.48%	4.46%
	6 mos. Avg.	4.42%					
<b>Average Dividend Yield</b>		4.29%					

Source: Yahoo! Finance

Southwest Water Company was excluded due to a pending merger.

For American Water Works, Value Line dividend and earnings growth rates were calculated using a 5-year compound growth formula using 2009 DPS and EPS as the base year.

**KENTUCKY AMERICAN WATER COMPANY  
GAS DISTRIBUTION COMPANY COMPARISON GROUP  
DCF Growth Rate Analysis**

<u>Company</u>	(1) Value Line <u>DPS</u>	(2) Value Line <u>EPS</u>	(3) Value Line <u>B x R</u>	(4) <u>Zacks</u>	(5) Thomson <u>Financial</u>
AGL Resources	2.50%	3.50%	5.00%	4.00%	5.07%
Atmos Energy	2.00%	5.50%	4.50%	4.67%	4.20%
LaClede Group	2.50%	2.50%	5.00%	3.00%	3.50%
New Jersey Resources	5.50%	6.50%	8.50%	N/A	5.10%
Nicor Inc.	0.00%	2.50%	4.00%	3.67%	2.70%
NiSource, Inc.	0.50%	5.00%	2.50%	3.00%	2.63%
Northwest Natural Gas	5.50%	4.50%	4.00%	5.13%	4.83%
Piedmont Natural Gas	3.50%	3.50%	4.00%	6.33%	3.70%
South Jersey Industries	6.00%	7.00%	7.50%	9.50%	7.50%
Southwest Gas	5.00%	8.00%	5.00%	6.00%	3.30%
WGL Holdings	3.00%	2.50%	4.00%	3.05%	3.05%
Averages excluding negative values	3.27%	4.64%	4.91%	4.84%	4.14%
Median Values	3.00%	4.50%	4.50%	4.34%	3.70%
Averages excl. > or =10% & < or = 1%	3.94%	4.64%	4.91%	4.84%	4.14%
<b>Sources: Zack's and First Call/Thomson Earnings Reports, retrieved May 28, 2010 Value Line Investment Survey, June 11, 2010</b>					

**RETURN ON EQUITY CALCULATION  
GAS DISTRIBUTION COMPANY COMPARISON GROUP**

	(1) Value Line Dividend Gr.	(2) Value Line Earnings Gr.	(3) Zack's Earning Gr.	(4) First Call Earning Gr.	(5) Average of All Gr. Rates
<b>Method 1:</b>					
Dividend Yield	4.29%	4.29%	4.29%	4.29%	4.29%
Growth Rate	3.27%	4.64%	4.84%	4.14%	4.22%
Expected Div. Yield	<u>4.36%</u>	<u>4.39%</u>	<u>4.39%</u>	<u>4.38%</u>	<u>4.38%</u>
<b>DCF Return on Equity</b>	<b>7.63%</b>	<b>9.03%</b>	<b>9.23%</b>	<b>8.52%</b>	<b>8.60%</b>
<b>Midpoint of Results</b>					<b>8.43%</b>
<b>Method 2:</b>					
Dividend Yield	4.29%	4.29%	4.29%	4.29%	4.29%
Median Growth Rate	3.00%	4.50%	4.34%	3.70%	3.88%
Expected Div. Yield	<u>4.35%</u>	<u>4.38%</u>	<u>4.38%</u>	<u>4.37%</u>	<u>4.37%</u>
<b>DCF Return on Equity</b>	<b>7.35%</b>	<b>8.88%</b>	<b>8.72%</b>	<b>8.07%</b>	<b>8.25%</b>
<b>Midpoint of Results</b>					<b>8.12%</b>
<b>Method 3:</b>					
Dividend Yield	4.13%	4.29%	4.29%	4.29%	4.25%
Growth Rate Excl. Rates > 10% & < or = 1%	3.94%	4.64%	4.84%	4.14%	4.39%
Expected Div. Yield	<u>4.21%</u>	<u>4.39%</u>	<u>4.39%</u>	<u>4.38%</u>	<u>4.34%</u>
<b>DCF Return on Equity</b>	<b>8.15%</b>	<b>9.03%</b>	<b>9.23%</b>	<b>8.52%</b>	<b>8.73%</b>
<b>Midpoint of Results</b>					<b>8.69%</b>

**KENTUCKY AMERICAN WATER COMPANY  
Capital Asset Pricing Model Analysis  
Water Utility Comparison Group**

**20-Year Treasury Bond, Value Line Beta**

<u>Line No.</u>		<u>Value Line</u>
1	Market Required Return Estimate	
2	Expected Dividend Yield	0.65%
3	Expected Growth	<u>10.74%</u>
4	Required Return	11.39%
5	Risk-free Rate of Return, 20-Year Treasury Bond	
6	Average of Last Six Months	4.44%
8	Risk Premium	
9	@ 6 Month Average RFR (Line 4 minus Line 6)	6.95%
10	Comparison Group Beta	0.72
11	Comparison Group Beta * Risk Premium	
12	@ 6 Month Average RFR (Line 10 * Line 9)	5.02%
13	CAPM Return on Equity	
14	@ 6 Month Average RFR (Line 12 plus Line 6)	9.46%

**5-Year Treasury Bond, Value Line Beta**

1	Market Required Return Estimate	
2	Expected Dividend Yield	0.65%
3	Expected Growth	<u>10.74%</u>
4	Required Return	11.39%
5	Risk-free Rate of Return, 5-Year Treasury Bond	
6	Average of Last Six Months	2.40%
8	Risk Premium	
9	@ 6 Month Average RFR (Line 4 minus Line 6)	8.98%
10	Comparison Group Beta	0.72
11	Comparison Group Beta * Risk Premium	
12	@ 6 Month Average RFR (Line 9 * Line 10)	6.49%
13	CAPM Return on Equity	
14	@ 6 Month Average RFR (Line 12 plus Line 6)	8.89%

**KENTUCKY AMERICAN WATER COMPANY**  
**Capital Asset Pricing Model Analysis**  
**Water Utility Comparison Group**

**Supporting Data for CAPM Analyses**

20 Year Treasury Bond Data

	<u>Avg. Yield</u>
November-09	4.24%
December-09	4.40%
January-10	4.50%
February-10	4.48%
March-10	4.49%
April-10	<u>4.53%</u>
6 month average	4.44%

5 Year Treasury Bond Data

	<u>Avg. Yield</u>
November-09	2.23%
December-09	2.34%
January-10	2.48%
February-10	2.36%
March-10	2.43%
April-10	<u>2.58%</u>
6 month average	2.40%

Value Line Market Growth Rate Data:

Forecasted Data:	
Earnings	12.96%
Book Value	<u>8.51%</u>
Average	10.74%
Source: Value Line Investment Survey for Windows, May 28, 2010	

Comparison Group Betas:

	<u>Value Line Beta</u>
American States Water	0.80
American Water Works	0.65
Aqua America	0.65
California Water Service Group	0.75
Connecticut Water Services	0.80
Middlesex Water Company	0.75
Pennichuck Corp.	0.50
SJW Corp.	0.95
York Water Company	<u>0.65</u>
Group Average Beta	0.72

Sources: Value Line reports

**KENTUCKY AMERICAN WATER COMPANY**  
**Capital Asset Pricing Model Analysis**  
**Historic Market Premium**

	<u>Geometric Mean</u>	<u>Arithmetic Mean</u>
Long-Term Annual Return on Stocks	9.80%	11.80%
Long-Term Annual Income Return on Long-Term Government Bond	<u>5.10%</u>	<u>5.20%</u>
Historical Market Risk Premium	4.70%	6.60%
Comparison Group Beta, Value Line	<u>0.72</u>	<u>0.72</u>
Beta * Market Premium	3.39%	4.77%
Current 20-Year Treasury Bond Yield	<u>4.44%</u>	<u>4.44%</u>
<b>CAPM Cost of Equity</b>	<b><u>7.83%</u></b>	<b><u>9.21%</u></b>

Source: *Ibbotson S&P 2010 Valuation Yearbook*, Morningstar

**TABLE 1**

**KENTUCKY AMERICAN WATER COMPANY  
WEIGHTED COST OF CAPITAL**

	<u>Percentage</u>	<u>Cost</u>	<u>Wtd. Cost</u>
Long-term Debt	52.06%	6.41%	3.34%
Short-term Debt	2.32%	2.09%	0.05%
Preferred Stock	1.65%	7.75%	0.13%
Common Equity	43.97%	9.50%	4.18%
Total	100.00%		7.69%

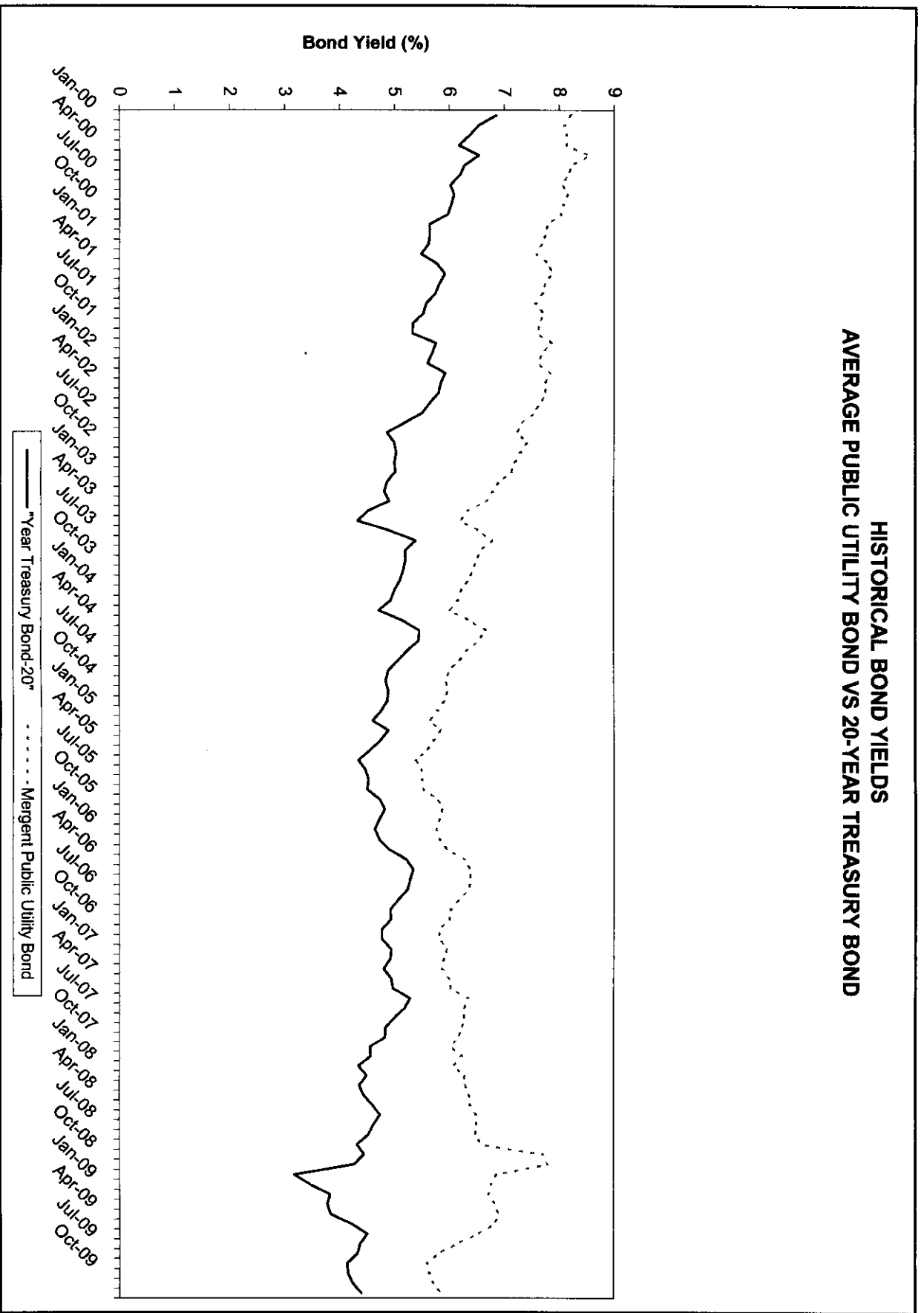


**TABLE 2**

**AMERICAN WATER ALLOWED RETURNS**

Arizona-American Water Company	9.90%
California-American Water Company	10.20%
Hawaii-American Water Company	10.60%
Illinois American Water Company	10.38%
Indiana American Water Company	10.00%
Iowa American Water Company	10.40%
Long Island American Water Company	9.50%
Maryland-American Water Company	10.75%
Missouri American Water Company	10.00%
New Jersey-American Water Company	10.30%
New Mexico-American Water Company	10.25%
Ohio-American Water Company	10.88%
Pennsylvania American Water Company	10.80%
Tennessee-American Water Company	10.20%
Virginia American Water Company	10.50%
West Virginia American Water Company	10.00%
Average ROE Award	10.29%

### HISTORICAL BOND YIELDS AVERAGE PUBLIC UTILITY BOND VS 20-YEAR TREASURY BOND



**Lexington-Fayette Urban County Government's Responses  
to Data Requests of Kentucky-American Water Company  
Case No. 2010-00036**

**WITNESS RESPONSIBLE:**

Richard A. Baudino  
Counsel

2. At page 44 of Mr. Baudino's testimony, he states "LFUCG reserves the right to include other revenue requirement adjustments that may be proposed by other parties in this proceeding." Since that statement was made, the Attorney General's witness Mr. Smith has proposed numerous revenue requirement adjustments itemized as C-1 through C-18 in Mr. Smith's written testimony and further quantified as items C-1 through C-18 at pages 1-2 of Mr. Smith's Schedule C.1. For each of those 18 proposed adjustments, please:
- A. state whether the LFUCG agrees or disagrees with the proposed adjustment;
  - B. if the LFUCG agrees, provide a complete description of why it agrees;
  - C. if the LFUCG disagrees, provide a complete description of why it disagrees;
  - D. if the LFUCG agrees with only part of a particular proposed adjustment, quantify in dollars the amount with which it agrees and explain why; and
  - E. if the LFUCG disagrees with only part of a particular proposed adjustment, quantify in dollars the amount with which it disagrees and explain why.

**RESPONSE:**

Mr. Baudino and Lexington have not fully reviewed the items listed in this request, and therefore are unable to provide a definitive answer to this request at this time, but reserve the right to do so.

**Lexington-Fayette Urban County Government's Responses  
to Data Requests of Kentucky-American Water Company  
Case No. 2010-00036**

**WITNESS RESPONSIBLE:**

Counsel

3. Please provide a copy of all documents including but not limited to electronic mail, electronic files, and documents in paper medium in the possession of the LFUCG, its Council Members, the LFUCG's Mayor's office, or the LFUCG's Vice-Mayor's office that relate in any way to this rate case and/or KAW's requested rate increase. This request is limited to documents generated from January 1, 2010 to the date of LFUCG's response to this request.

**RESPONSE:**

Lexington objects based upon relevancy and because this request is overly broad and unduly burdensome, and further objects to the production of documents generated by, or previously provided to, KAW or its counsel as part of any correspondence between it and Lexington, its elected officials, employees, board members, or agents. Lexington also further objects to the production of any documents protected by the attorney-client privilege and/or work product doctrine. Without waiving the objections above, the responsive documents are attached. Lexington also has more than 4,200 petitions from persons opposed to the rate increase that were submitted either electronically or in paper form pursuant to the "Online Form" attached hereto, and a limited number of e-mails from constituents related to the rate increase. However, Lexington has concerns regarding the privacy expectations of the persons submitting the forms and e-mails and some of the personal information contained therein, and therefore would like to discuss with the parties and the Commission Staff the necessity of providing these documents or an appropriate arrangement for the disclosure of these documents prior to their production.



# NEWS DROP

An Update Concerning Issues in the Water Industry

Volume 3, Issue 2

February 2010

## KENTUCKY AMERICAN WATER FILES RATE INCREASE REQUEST

Kentucky American Water filed an application with the Kentucky Public Service Commission (PSC) on February 26, 2010 for a change in rates for water service. The application includes a request to increase overall revenues by \$25.848 million. Approximately 91 percent of the overall increase is directly driven by the costs associated with investment in and operation of a new 20 million-gallon-per day (MGD) water treatment plant and associated transmission facilities being constructed to address Central Kentucky's water supply shortfall.

The Central Kentucky Water Supply Solution project includes the new 20 MGD water treatment plant on Pool 3 of the Kentucky River in Owen County, a booster pump station and 3-million-gallon storage tank in Franklin County and a 31-mile underground water transmission main connecting the new plant to the company's existing water distribution system in Fayette County. These facilities, which were approved by the PSC in 2008, are currently being constructed and scheduled to be operational by late summer 2010.

The rate request, if granted in full, would increase the monthly bill for an average residential customer using 4,470 gallons from \$25.46 to \$34.90, an increase of \$9.44 per month or 31 cents per day. **Even with this increase, customers would continue to receive high-quality, reliable water service for less than a penny per gallon.**

Approximately \$8.63 of the monthly increase for the average residential customer in this case is directly related to the cost of the new treatment plant and transmission facilities. The new treatment plant and transmission facilities' cost, expected completion date and overall rate impact are consistent with the company's 2008 Certificate Application approved by the PSC.

While communities across Kentucky and the country are struggling to keep up with the necessary investments in their water and wastewater infrastructure, Kentucky American Water continues to invest annually in its systems to ensure that local water quality and service continues to be as good as or better than local, state and federal quality standards. And even with these investments, at less than a penny per gallon, water service remains a great value for our customers.

As a private water utility in Kentucky, Kentucky American Water cannot increase rates on its own. Rather, it must submit a request to the PSC for rigorous, months-long review and analysis. This comprehensive, transparent process involves PSC commissioners and staff, the state Attorney General and other parties, and includes opportunity for public feedback. The process is expected to take approximately seven months.

*Kentucky American Water, a wholly-owned subsidiary of American Water (NYSE: AWK), is the largest investor-owned water utility in the state, providing high-quality and reliable water and/or wastewater services to approximately half a million people. Founded in 1886, American Water is the largest investor-owned U.S. water and wastewater utility company. More information can be found on the Web at [www.amwater.com](http://www.amwater.com).*

***Communicating with our public officials is a high priority for Kentucky American Water.***

Here are some FAQ's regarding the Kentucky American Water rate increase request:

***Why does Kentucky American need to raise rates now?***

This request is driven by the capital investment associated with building the Central Kentucky Water Supply Solution, the 20-million-gallon-per-day new water treatment plant and distribution system. The company's current rates do not include the capital costs on the additional Debt and Equity investments to which Kentucky American committed to build these much-needed facilities. Proactive capital investment saves money in the long-run by making sure our water systems do not fall into serious disrepair, and our water supplies are adequate to meet regional demands.

***Who sets the rates paid by Kentucky American Water customers?***

Our rates are regulated and set by the Public Service Commission. While we work hard to keep rates down, we must balance this objective with the need for significant capital investment to ensure that our systems provide adequate supplies of high quality drinking water.

***How do I voice my opinion about such rate increases?***

All customers may participate in the rate-making process by contacting the PSC at 1-502-564-3940.

For more information about these topics, contact John-Mark Hack at (859) 268-6314

## Mayor's Newspaper



- Mayor's Budget Address
- Budget Fact Sheet
- Proposed Budget

Mayor Newberry announces the 2011 EcoART grant program

July 1- Local artists will again have the opportunity to creatively educate citizens on environmental issues through the EcoART grant program, Mayor Jim Newberry and LexArts President Jim Clark announced today.

Disaster aid registration deadline July 12; local center to close

June 30- Mayor Jim Newberry today joined Federal Emergency Management Agency officials in reminding local residents that the deadline to register for disaster aid related to the flooding in May is fast approaching.

Mayor unveils new recycling equipment

June 29- The stage is now set for Lexington residents and businesses to recycle more materials, as the city's recycling center has been expanded and new equipment installed, Mayor Jim Newberry announced today.

Mayor kicks off 'Share the Road' safety campaign

June 24- Lexington Mayor Jim Newberry today kicked off a new safety campaign, urging motorists, cyclists and pedestrians to Share the Road.

Support Spotlight Lexington festival through pins

June 22- Mayor Jim Newberry today encouraged Lexington businesses and citizens to demonstrate their support for Spotlight Lexington, the festival Lexington is

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### **DEVELOPING NEWS**

#### **Kentucky- American Water**

More than 3,000 citizens (and still growing) join petition drive

Proposed Water Rate Increase: Just Too Much

More than 1,100 join petition drive

Statement from Mayor Jim Newberry about Kentucky American Water

Sign the petition

- Recent News
- Archives
- 2010 Official Proclamations and Commemorations
- Email Mayor Newberry

## City News

### **More than 3,000 citizens (and still growing) join petition drive**

**Posted Date:** 3/30/2010 11:15 AM

More than 3,000 people have joined Mayor Jim Newberry's petition drive since it began March 19, joining together to fight the 37.5% rate increase Kentucky-American has requested from the Kentucky Public Service Commission.

"Even though the drive began 11 days ago and it has received limited publicity, more than 1 in every 100 residents of our city has already spoken out in opposition to this unfair, excessive increase," Newberry said. "I believe this petition will send a clear message to the Commission."

The petition drive will continue through the date on which a hearing is conducted by the Commission. At the hearing, the information will be turned over to the Commission, which sets water rates. In addition to starting the petition drive, on March 3 the Mayor directed the city's lawyers to intervene in the case. Along with the Kentucky Attorney General, the city will represent the public's interests before the Commission.

Residents are still welcome to sign the petition. Those who want to sign electronically should go to [www.lexingtonky.gov/justtoomuch](http://www.lexingtonky.gov/justtoomuch). Computers are available at public libraries for residents who do not otherwise have access to a computer. Paper copies of the petition are available at the front desk in the Government Center, 200 E. Main St.

"We had one gentleman come in with 102 signed paper petitions," Newberry said. "He said he some of his friends don't use computers, but they wanted to participate."

Newberry said if the proposed rate request is approved by the Commission, overall water rates would increase by approximately 60 percent over 2008 rates. "Kentucky-American's proposal is excessive and it will impose an undue hardship on many citizens," Newberry said.

The company has said the rate increase would pay for a new treatment plant it built to ensure Lexington has an adequate water supply.

Newberry said, after 24 years of considering various options, it is good to have a solution to the city's water supply problem, which repeatedly left the community with water restrictions during droughts. Water restrictions inconvenienced citizens, damaged personal property and harmed businesses.

"We understand that any solution to our water supply problems came with a price tag and, therefore, with a rate increase," Newberry said. "But Kentucky-American's recent 37.5% rate increase request, on top of an 18% increase last year, is just too much."

## Proposed Water Rate Increase: Just Too Much

Proposed Water Rate Increase: Just Too Much

*By Jim Newberry*

I strongly oppose Kentucky-American Water's recent rate hike request. Kentucky-American is asking the Public Service Commission for an additional 37.5% rate increase, on top of the 18% increase it received just last year – a 55.5% increase in just two years. That is both excessive and unacceptable, and I will use every power of my administration to fight this rate request.

At my direction, on March 3, the city filed a motion to intervene, along with the Attorney General, in the rate case before the Commission. We will continue to vigorously oppose Kentucky-American's rate hike request as the rate case progresses.

Many citizens still have strong feelings about whether or not the city should have used condemnation to take ownership of the water company. That question was decisively resolved by a 2006 vote of our citizens, but the 2006 vote did nothing to solve our community's most urgent problem concerning water – we did not have an adequate water supply. That problem could no longer be ignored.

The construction of the water treatment plant on the Kentucky River puts an end to 24 years of indecision that repeatedly left our community with water restrictions during droughts that inconvenienced citizens, damaged personal property and harmed businesses. The Commission made its 2008 decision to permit the construction of the Kentucky River plant after years of conflicting feedback from citizens, politicians and the media.

In 1999, despite a recommendation from the Fayette County Water Supply Planning Council to build a pipeline to the Ohio River in Louisville, the Urban County Council passed a resolution insisting that our water come from the Kentucky River, prompting Kentucky-American to drop an option it had been exploring to build a pipeline to Louisville.

In 1999, this newspaper argued for a Kentucky River plant and against the Louisville pipeline, asking, "In 20 years, will we (be) back where we are today, worried about a water shortage only to realize that the Kentucky River could have met our needs all along?" Recently, the paper urged that a Louisville pipeline be considered, much like the option Kentucky-American was considering in 1999.

In more recent history, between November 2007 and February 2008, various Councilmembers sent four different letters to the Public Service Commission because they could not find common ground. Two of the four letters were sent by Councilmembers as "private citizens." One of the letters was signed by 11 Councilmembers, who urged the Commission to reconsider the Ohio River, an idea being pitched by Louisville Water.

By state law, the Commission alone has the power to make decisions concerning water rates and water supply. Courts can overrule them, but city officials can't.



Louisville Water presented its case to the Commission. In the end, after thoroughly evaluating the competing proposals from both Kentucky-American and Louisville Water, the Commission supported the construction of the Kentucky River plant.

In approving the Kentucky River plant, the commission stated, "We are convinced that our decision today provides Central Kentucky with the most timely, cost-effective and reliable solution to its water supply needs in the coming decades." In making its ruling, the Commission conducted an exhaustive economic analysis and found that, in the long-term, costs of the Kentucky River plant were "nearly identical" to those of the Louisville pipeline.

Any solution to our water supply problems came with a price tag and, therefore, with a rate increase. It is unfortunate that some are conveniently forgetting this part of the story, and are instead using this current excessive rate increase request as an opportunity to once again confuse, distort and politicize the issue. Our community deserves better.

I'm glad that very soon we will have an ample source of clean water to meet community demand, now and in the future. An ample water supply means that we will be able to assure the public's safety, continue our economic growth, and provide opportunities for good jobs for our children and grandchildren.

We are now moving in the right direction, rather than adding more posturing to 24 years of debate. That's a fact that should not be lost on any of us.

That being said, while undoubtedly both the Kentucky River plant and Louisville pipeline options would have led to nearly identical rate increases, the current request on the heels of last year's rate increase is excessive by any standard.

Sadly, Kentucky-American is choosing to impose an undue hardship on many of the same citizens who put their faith and trust in the company at the ballot box in 2006. It is time to put aside past differences and join together as a community to fight against this unreasonable rate increase request.

Please join our effort to stop this water rate increase by going to [www.lexingtonky.gov/justtoomuch](http://www.lexingtonky.gov/justtoomuch) to sign our community petition, so that we can deliver the petition to the Commission as we fight the proposed rate increase.

## City News

### **More than 1,100 join petition drive**

**Posted Date:** 3/23/2010 2:00 PM

Over 1,100 people have already joined Mayor Jim Newberry's electronic petition drive, joining together to fight the 37.5% rate increase Kentucky-American has requested from the Kentucky Public Service Commission.

"I appreciate these citizens for taking time to get involved to fight this unfair, excessive increase, and I invite all citizens to sign the petition," said Newberry, who started the petition drive just last Friday. To sign the petition should go to [www.lexingtonky.gov/justtoomuch](http://www.lexingtonky.gov/justtoomuch).

For anyone who does not have access to a computer at home, computers are available at any branch of the Lexington Public Library. In addition, citizens can fill out paper petitions in the lobby at the Government Center, 200 E. Main St. The petition will be delivered to the Commission, which sets utility rates.

Newberry said, if the proposed rate request is approved by the Commission, overall water rates would increase by more than 60 percent over 2008 rates. "Kentucky-American's proposal is excessive and it will impose an undue hardship on many citizens," Newberry said.

In addition to the petition drive, on March 3 the Mayor directed the city's lawyers to intervene in the case. Along with the Kentucky Attorney General, the city will represent the public's interests in the case.

The company has said the rate increase would pay for a new treatment plant it built to ensure Lexington has an adequate water supply.

Newberry said, after 24 years of considering various options, it is good to have a solution to the city's water supply problem that repeatedly left the community with water restrictions during droughts that inconvenienced citizens, damaged personal property and harmed businesses.

"We understand that any solution to our water supply problems came with a price tag and, therefore, with a rate increase," Newberry said. "But Kentucky-American's recent 37.5% rate increase request, on top of an 18% increase last year, is just too much."

## City News

### **Statement from Mayor Jim Newberry about Kentucky American Water**

**Posted Date:** 3/16/2010 1:15 PM

“It is regrettable that Kentucky-American representatives have chosen not to appear before Council and answer questions,” said Mayor Jim Newberry. “However, on March 3, at my direction, we filed a motion to intervene in the case, and I believe that motion will soon be granted by the Public Service Commission. As intervenors, we will have an opportunity to ask questions in an official capacity, before the Commission, on behalf of the citizens of Fayette County. I believe this 37.5% rate increase request is excessive and will impose a hardship on many citizens. It comes on the heels of an 18% increase just last year. We will staunchly oppose it.”

**Online Forms**

**JUST TOO MUCH:**

**Kentucky-American Water Company Rate Hike Petition**

Kentucky-American is proposing to increase water rates by 37.5 percent on the heels of an 18 percent increase last year. That amounts to an increase of approximately 60 percent in just two years. Mayor Jim Newberry thinks this rate is excessive and will impose a hardship on many families.

I want to join Mayor Jim Newberry and the Lexington-Fayette Urban County Government in fighting the excessive water rate increase proposed by Kentucky-American Water by signing this electronic petition.

This petition will be delivered to the Kentucky Public Service Commission.

**Please fill out the following form and click Submit below to sign the petition:**

*\* Questions marked with an asterisk are required*

**I oppose the 37.5 % increase in my water rates: \***

Yes

**I would like to receive regular e-mail updates from Mayor Newberry about this and other city issues:**

Yes

No

**Name: \***

**Address (street, city, zip code):**

**Email Address: \***

09 LFUCG

---

**From:** Tim Bennett  
**Sent:** Monday, March 01, 2010 9:04 AM  
**To:** David Barberie  
**Cc:** Thomas Webb; Robert Hendricks; Rickie Caldwell; James Bush; Linda Rumpke; Mary Fister; David Ades; David Mattingly - LFD  
**Subject:** RE: Case No. 2010-00036

The requested increase in hydrant rental rates would increase our costs by almost \$1 million annually.

Timothy E. Bennett  
Commissioner of Public Safety  
Lexington-Fayette Urban County Government  
200 East Main Street  
Lexington, Kentucky 40507  
859.258.3280

---

**From:** David Barberie  
**Sent:** Monday, March 01, 2010 8:16 AM  
**To:** Robert Hendricks; Rickie Caldwell; James Bush  
**Cc:** Thomas Webb; Tim Bennett  
**Subject:** FW: Case No. 2010-00036

FYI

This message may contain information which is confidential or privileged and should not be disseminated to the public. If you are not the intended recipient, please advise the sender immediately by reply e-mail and delete this message and any attachments without retaining a copy. Thank you.

David J. Barberie  
Attorney Senior  
Lexington-Fayette Urban County Government  
Department of Law (11th floor)  
200 East Main Street  
P.O. Box 34028  
Lexington, Kentucky 40588-4028  
Telephone: (859)258-3500  
Facsimile: (859)258-3538  
dbarber@lfucg.com

---

**From:** David Barberie  
**Sent:** Friday, February 26, 2010 11:17 AM  
**To:** Joseph Kelly  
**Cc:** Shaye Rabold; Logan Askew  
**Subject:** FW: Case No. 2010-00036

FYI. See Page 3 of application

07/07/2010

This message may contain information which is confidential or privileged and should not be disseminated to the public. If you are not the intended recipient, please advise the sender immediately by reply e-mail and delete this message and any attachments without retaining a copy. Thank you.

David J. Barberie  
Attorney Senior  
Lexington-Fayette Urban County Government  
Department of Law (11th floor)  
200 East Main Street  
P.O. Box 34028  
Lexington, Kentucky 40588-4028  
Telephone: (859)258-3500  
Facsimile: (859)258-3538  
[dbarberi@lfucg.com](mailto:dbarberi@lfucg.com)

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**From:** Ingram III, Lindsey [<mailto:L.Ingram@skofirm.com>]  
**Sent:** Friday, February 26, 2010 9:16 AM  
**To:** Wuetcher, Jerry (PSC); Osterloh, Todd (PSC); [pscfilings@ky.gov](mailto:pscfilings@ky.gov); Spenard, David (KYOAG); [batesandskidmore@gmail.com](mailto:batesandskidmore@gmail.com)  
**Cc:** David Barberie; [A.Turner@amwater.com](mailto:A.Turner@amwater.com)  
**Subject:** Case No. 2010-00036

I e-filed KAW's Application and supporting materials this morning at 9 a.m. Please see the attached cover letter.

Lindsey W. Ingram III  
Stoll Keenon Ogden PLLC  
300 W. Vine St.  
Suite 2100  
Lexington, KY 40507  
859-231-3982 (direct dial)  
859-246-3672 (direct fax)  
[L.ingram@skofirm.com](mailto:L.ingram@skofirm.com)

MOTION

I move to place on the docket for tonight's meeting a resolution endorsing the intervention of the Kentucky Attorney General in Public Service Commission Rate Case No. 2010-00036, Adjustment of Rates of Kentucky-American Water Company, and requesting that representatives of the Kentucky-American Water Company appear before the Urban County Council at its next work session to explain the rate increase and matters related to it.

---

Council Member

Motion to be made at Council Meeting on March 11, 2010.

X:\Cases\CO\10-LE0029\LEG\00251904.DOC

RESOLUTION NO. \_\_\_\_\_-2010

A RESOLUTION ENDORSING THE INTERVENTION OF THE KENTUCKY ATTORNEY GENERAL IN PUBLIC SERVICE COMMISSION RATE CASE NO. 2010-00036, ADJUSTMENT OF RATES OF KENTUCKY-AMERICAN WATER COMPANY, AND REQUESTING THAT REPRESENTATIVES OF THE KENTUCKY-AMERICAN WATER COMPANY APPEAR BEFORE THE URBAN COUNTY COUNCIL AT ITS NEXT WORK SESSION TO EXPLAIN THE RATE INCREASE AND MATTERS RELATED TO IT.

---

WHEREAS, the citizens and businesses of Fayette County are experiencing unprecedented economic adversity and distress; and,

WHEREAS, the responsibility of our government and elected representatives is to represent our citizens in matters related to the cost of all public services, including utility services; and,

WHEREAS, the Kentucky American Water Company has requested a rate increase of almost 38%, which is in addition to an 18% increase requested and approved by the Public Service Commission last year; and,

WHEREAS, this requested rate increase is based almost entirely upon the capital cost of a new \$160 million water treatment plant and pipeline;

WHEREAS, representations were made to our citizens and government that the new plant would be built to supply not only Fayette but several neighboring municipalities; and,

WHEREAS, there is no clear indication that any significant progress has been made by Kentucky-American Water Company to successfully market water produced by the new plant to the neighboring municipalities, thereby lowering the cost to Lexington citizens;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That the Preamble to this Resolution be incorporated by reference as if fully set out herein.

Section 2 - That the intervention of the Kentucky Attorney General in Public Service Case No. 2010-00036, Adjustment of Rates of Kentucky-American Water Company, is hereby endorsed and encouraged on behalf of the citizens of Lexington-



Fayette County to ensure the interests of its citizens are protected and advanced in the rate increase proceedings before the Kentucky Public Service Commission.

Section 3 - That the Urban County Council requests that representatives of Kentucky-American Water Company appear before it at its next work session in order to explain its rate increase request and other matters related to this issue.

Section 4 - That the Clerk of the Lexington-Fayette Urban County Council be and hereby is directed to send a copy of this Resolution to Nick Rowe, President, Kentucky-American Water Company, 2300 Richmond Road Lexington, Kentucky 40502.

Section 5 - That this Resolution shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CLERK OF URBAN COUNTY COUNCIL

PUBLISHED:

**David Barberie**

---

**From:** David Barberie  
**Sent:** Wednesday, March 10, 2010 6:32 PM  
**To:** 'Tom Calkins'  
**Subject:** RE: Intervention Deadline - 2010-00036

Tom –

I am not aware of a specific deadline that is in place. The sooner, the better.

This message may contain information which is confidential or privileged and should not be disseminated to the public. If you are not the intended recipient, please advise the sender immediately by reply e-mail and delete this message and any attachments without retaining a copy. Thank you.

David J. Barberie  
Attorney Senior  
Lexington-Fayette Urban County Government  
Department of Law (11th floor)  
200 East Main Street  
P.O. Box 34028  
Lexington, Kentucky 40588-4028  
Telephone: (859)258-3500  
Facsimile: (859)258-3538  
dbarber@lfucg.com

---

**From:** Tom Calkins [mailto:tom\_calkins@nicholasville.org]  
**Sent:** Wednesday, March 10, 2010 5:16 PM  
**To:** David Barberie  
**Subject:** Intervention Deadline - 2010-00036

David:

Do you know what the filing deadline for interveners is in the above case?

Thanks,

Tom

Thomas P. Calkins  
Director of Public Utilities  
City of Nicholasville  
859-885-9473(V)  
859-885-9476 (F)

07/07/2010

15 LFUCG

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**From:** Tom Calkins [tom\_calkins@nicholasville.org]  
**Sent:** Wednesday, March 10, 2010 5:28 PM  
**To:** Billy Jenkins; Burtner, Ed; Burtner, Mayor Ed; Herbie Bannister  
**Cc:** David Barberie  
**Subject:** KAWC 2010-00036  
**Attachments:** KAWCRateComp.pdf

The above rate case calls for a 50+ percent increase to Sales for Resale (Attached) customers to begin with usage occurring on March 28. I have been approached by some rural water districts that are interested in intervening. Are any of you interested enough to possibly meet and discuss same??

Please let me know soon....because time is short.

Thanks,

Tom

Thomas P. Calkins  
Director of Public Utilities  
City of Nicholasville  
859-885-9473(V)  
859-885-9476 (F)

07/07/2010

16 LFUCG



Lexington-Fayette Urban County Government  
OFFICE OF THE COUNCIL CLERK

Jim Newberry  
Mayor

Susan Lamb  
Council Clerk

March 12, 2010

Mr. Nick Rowe  
President  
Kentucky-American Water Company  
2300 Richmond Road  
Lexington, KY 40502

Dear Mr. Rowe:

I have been directed by the Lexington-Fayette Urban County Council to send you a copy of Resolution No. 135-2010, which was passed at a meeting of the Council held on March 11, 2010.

Resolution No. 135-2010 endorses the intervention of the Kentucky Attorney General in Public Service Commission Rate Case No. 2010-00036, Adjustment of Rates of Kentucky-American Water Company, and requests that representatives of the Kentucky-American Water Company appear before the Urban County Council at its next Work Session to explain the rate increase and matters related to it.

Your attention to this matter is greatly appreciated.

Sincerely,

Meredith Nelson  
Deputy Council Clerk

Enclosure



Lexington-Fayette Urban County Government  
OFFICE OF THE COUNCIL CLERK

Jim Newberry  
Mayor

Susan Lamb  
Council Clerk

March 12, 2010

Mr. Jeff Derouen  
Executive Director  
Public Service Commission  
P.O. Box 615, 211 Sower Blvd.  
Frankfort, KY 40602-0615

Dear Mr. Derouen:

I have been directed by the Lexington-Fayette Urban County Council to send you a copy of Resolution No. 135-2010, which was passed at a meeting of the Council held on March 11, 2010.

Resolution No. 135-2010 endorses the intervention of the Kentucky Attorney General in Public Service Commission Rate Case No. 2010-00036, Adjustment of Rates of Kentucky-American Water Company, and requests that representatives of the Kentucky-American Water Company appear before the Urban County Council at its next Work Session to explain the rate increase and matters related to it.

Your attention to this matter is greatly appreciated.

Sincerely,

  
Meredith Nelson  
Deputy Council Clerk

Enclosure

RESOLUTION NO. 135 -2010

A RESOLUTION ENDORSING THE INTERVENTION OF THE KENTUCKY ATTORNEY GENERAL IN PUBLIC SERVICE COMMISSION RATE CASE NO. 2010-00036, ADJUSTMENT OF RATES OF KENTUCKY-AMERICAN WATER COMPANY, AND REQUESTING THAT REPRESENTATIVES OF THE KENTUCKY-AMERICAN WATER COMPANY APPEAR BEFORE THE URBAN COUNTY COUNCIL AT ITS NEXT WORK SESSION TO EXPLAIN THE RATE INCREASE AND MATTERS RELATED TO IT.

---

WHEREAS, the citizens and businesses of Fayette County are experiencing unprecedented economic adversity and distress; and,

WHEREAS, the responsibility of our government and elected representatives is to represent our citizens in matters related to the cost of all public services, including utility services; and,

WHEREAS, the Kentucky American Water Company has requested a rate increase of almost 38%, which is in addition to an 18% increase requested and approved by the Public Service Commission last year; and,

WHEREAS, this requested rate increase is based almost entirely upon the capital cost of a new \$160 million water treatment plant and pipeline;

WHEREAS, the Council would like to confirm what progress has been made by Kentucky-American Water Company to successfully market water produced by the new plant to the neighboring municipalities, thereby lowering the cost to Lexington citizens;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That the Preamble to this Resolution be incorporated by reference as if fully set out herein.

Section 2 - That the intervention of the Kentucky Attorney General in Public Service Case No. 2010-00036, Adjustment of Rates of Kentucky-American Water Company, is hereby endorsed and encouraged on behalf of the citizens of Lexington-Fayette County to ensure the interests of its citizens are protected and advanced in the rate increase proceedings before the Kentucky Public Service Commission.

Section 3 - That the Urban County Council requests that representatives of Kentucky-American Water Company appear before it at its next work session in order to explain its rate increase request and other matters related to this issue.

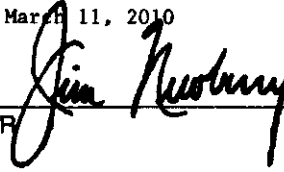
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Section 4 - That the Clerk of the Lexington-Fayette Urban County Council be and hereby is directed to send a copy of this Resolution to Nick Rowe, President, Kentucky-American Water Company, 2300 Richmond Road Lexington, Kentucky 40502; and Jeff Derouen, Executive Director, Public Service Commission, P.O. Box 615, 211 Sower Boulevard, Frankfort, Kentucky 40602-0615.

Section 5 - That this Resolution shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: March 11, 2010

MAYOR



ATTEST:

  
CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: March 18, 2010-1t

DJB X:\CASES\CO\10-LE0029\LEG\00252124.DOC

20 LFUCG

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**From:** Meredith Nelson  
**Sent:** Tuesday, March 16, 2010 9:32 AM  
**To:** Council Members; Council Staff; Jim Newberry - Mayor; Logan Askew; David Barberie; Rebecca Langston  
**Cc:** Susan Lamb  
**Subject:** FW: Attached Image  
**Attachments:** 0219\_001.pdf

Good morning –

The attached documents were just received in our office. I will deliver printed copies to the Council Office & to the Mayor's Office shortly.

Thank you,  
Meredith Nelson  
Council Clerk's Office  
859-258-3242  
[mnelson@lexingtonky.gov](mailto:mnelson@lexingtonky.gov)

07/01/2010





**STOLL · KEENON · OGDEN**  
 PLLC

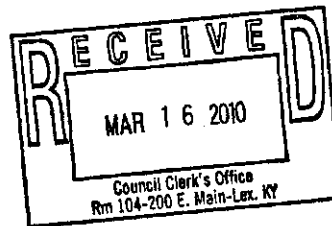
300 WEST VINE STREET  
 SUITE 2100  
 LEXINGTON, KY 40507-1801  
 MAIN: (859) 231-3000  
 FAX: (859) 253-1093  
 www.skofirm.com

**LINDSEY W. INGRAM III**  
 DIRECT DIAL: (859) 231-3982  
 DIRECT FAX: (859) 246-3672  
 L.Ingram@skofirm.com

March 16, 2010

**HAND DELIVERED**

Mercedith Nelson  
 Deputy Council Clerk  
 LFUCG  
 200 East Main Street  
 Lexington, Kentucky 40507



Re: Resolution 135-2010

Dear Ms. Nelson:

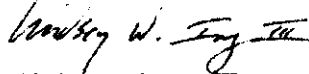
We thank you for inviting Kentucky American Water ("KAW") to attend the LFUCG Council work session this afternoon to discuss KAW's pending rate case. The case is currently pending at the Kentucky Public Service Commission ("PSC"), which has exclusive jurisdiction over all regulated matters of KAW. Several parties, including the Attorney General and the LFUCG, have asked to intervene in the case, and KAW welcomes their participation. KAW has worked well with LFUCG's staff attorneys in past rate cases and looks forward to doing so again. The PSC process will include multiple opportunities for the LFUCG to ask as many questions as it desires about the requested rate increase. It will also include an opportunity to cross-examine KAW's witnesses under oath.

To the extent that members of the LFUCG Council have specific questions that are not answered by the enclosed materials, those questions may be posed in the normal and orderly process at the PSC, where discovery is governed by PSC rules and long-established practice and procedure. Out of respect for the integrity of the process that will occur over the coming months at the PSC, we will not be able to attend the work session. The PSC and its staff are comprised of scores of dedicated professionals with the knowledge and expertise to consider and decide the many important issues before it, including KAW's pending general rate case. We appreciate the invitation and look forward to working with the LFUCG at the PSC as we all invest in ensuring an adequate water supply for Central Kentuckians.

Meredith Nelson  
March 16, 2010  
Page 2

Very truly yours,

Stoll Keenon Ogden PLLC



Lindsey W. Ingram III

Enclosure

cc: Jeff Derouen  
David Barberie

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**PRESS RELEASE**

February 26, 2010

Susan Lancho  
859-268-6332

Susan.lancho@amwater.com

**Investment in Central Kentucky Water Supply  
Project Drives Request for New Rates***Proposed Increase Still Retains Value of Water Service at  
Less than a Penny a Gallon*

Lexington, Ky., (Feb. 26, 2010) – Kentucky American Water today filed an application with the Kentucky Public Service Commission (PSC) for a change in rates in water service.

The application includes a request to increase overall revenues by \$25.848 million. Approximately 91 percent of the overall increase is directly driven by the costs associated with investment in and operation of a new 20 million-gallon-per day (MGD) water treatment plant and associated transmission facilities being constructed to address Central Kentucky's water supply shortfall.

The Central Kentucky Water Supply Solution project includes the new 20 MGD water treatment plant on Pool 3 of the Kentucky River in Owen County, a booster pump station and 3-million-gallon storage tank in Franklin County and a 31-mile underground water transmission main connecting the new plant to the company's existing water distribution system in Fayette County. These facilities, which were approved by the PSC in 2008, are currently being constructed and scheduled to be operational by late summer 2010.

Today's request, if granted in full, would increase the monthly bill for an average residential customer using 4,470 gallons from \$25.46 to \$34.90, an increase of \$9.44 per month or 31 cents per day. Even with this increase, customers would continue to receive high-quality, reliable water service for less than a penny per gallon.

-more-

## KENTUCKY AMERICAN WATER FILES RATE REQUEST

Approximately \$8.63 of the monthly increase for the average residential customer in this case is directly related to the cost of the new treatment plant and transmission facilities. The new treatment plant and transmission facilities' cost, expected completion date and overall rate impact are consistent with the company's 2008 Certificate Application approved by the PSC.

"While communities across the country are struggling to keep up with the necessary investments in their water and wastewater infrastructure, Kentucky American Water continues to invest annually in its systems to ensure that local water quality and service continues to be as good as or better than local, state and federal quality standards," said Susan Lancho, communications manager. "And even with these investments, at less than a penny per gallon, water service remains a great value for our customers."

As a private water utility in Kentucky, Kentucky American Water cannot increase rates on its own. Rather, it must submit a request to the PSC for rigorous, months-long review and analysis. This comprehensive, transparent process involves PSC commissioners and staff, the state Office of the Attorney General and other parties, and includes opportunity for public feedback. The process is expected to take approximately seven months.

Kentucky American Water last filed a request for an increase in rates in October 2008.

More information regarding the Central Kentucky Water Supply Solution can be found at [www.kentuckywatersolution.com](http://www.kentuckywatersolution.com).

Kentucky American Water, a wholly owned subsidiary of American Water (NYSE: AWK), is the largest investor-owned water utility in the state, providing high-quality and reliable water and/or wastewater services to approximately half a million people. Founded in 1886, American Water is the largest investor-owned U.S. water and wastewater utility company. With headquarters in Voorhees, N.J., the company employs more than 7,000 dedicated professionals who provide drinking water, wastewater and other related services to approximately 16 million people in 35 states and Ontario, Canada. More information can be found by visiting [www.amwater.com](http://www.amwater.com)

-end-

25 LFUCG

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**From:** Susan Straub  
**Sent:** Tuesday, March 16, 2010 11:15 AM  
**To:** Shaye Rabold; Logan Askew; Joseph Kelly  
**Cc:** David Barberie  
**Subject:** please advise if changes needed

The letter we received back from Ky American, refusing to come to Council, is prompting a story.

## Statement from Mayor Jim Newberry

“It is regrettable that Kentucky-American representatives have chosen not to appear before Council and answer questions,” said Mayor Jim Newberry. “However, we have, at my direction, filed a motion to intervene in the case, and I believe that motion will soon be granted by the Public Service Commission. As intervenors, we will have an opportunity to ask questions in an official capacity, before the Commission, on behalf of the citizens of Fayette County. I believe this rate increase is excessive and will impose a hardship on many citizens, and we will staunchly oppose it.”

26 LFUCG

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**From:** Spenard, David (KYOAG) [david.spenard@ag.ky.gov]  
**Sent:** Monday, April 05, 2010 4:49 PM  
**To:** David Barberie  
**Subject:** RE: KY PSC Case No. 2010-00036

David,

No. I do not recall.

(Sorry.)

Cordially,

David

---

**From:** David Barberie [mailto:dbarberi@lexingtonky.gov]  
**Sent:** Monday, April 05, 2010 12:40 PM  
**To:** Spenard, David (KYOAG)  
**Subject:** RE: KY PSC Case No. 2010-00036

Thanks, David.

On an unrelated matter, do you recall whether to construction bids for this project were ever made public? I seem to recall that they were initially submitted under seal, but would assume that whatever confidential aspect may have existed back then no longer exists?

This message may contain information which is confidential or privileged and should not be disseminated to the public. If you are not the intended recipient, please advise the sender immediately by reply e-mail and delete this message and any attachments without retaining a copy. Thank you.

David J. Barberie  
Attorney Senior  
Lexington-Fayette Urban County Government  
Department of Law (11th floor)  
200 East Main Street  
P.O. Box 34028  
Lexington, Kentucky 40588-4028  
Telephone: (859)258-3500  
Facsimile: (859)258-3538  
dbarberi@lfucg.com

---

**From:** Spenard, David (KYOAG) [mailto:david.spenard@ag.ky.gov]

07/02/2010

**Sent:** Monday, April 05, 2010 12:03 PM

**To:** A.Turner@amwater.com; Ingram III, Lindsey; Louise.Magee@amwater.com; David Barberie; Leslye Bowman; BatesAndSkidmore@gmail.com; PSC - Electronic Filings Mailbox; Wuetcher, Jerry (PSC)

**Subject:** KY PSC Case No. 2010-00036

Good afternoon.

Commonwealth of Kentucky

Before the Public Service Commission

Case No. 2010-00036

The Attorney General gives notice of the filing of his request for information to Kentucky-American Water Company. The uploading of the filing took place at approximately 11:55 a.m., on this 5<sup>th</sup> day of April, 2010.

The Office of the Attorney General is responsible for this filing. David Edward Spenard has made the electronic filing, and his e-mail address is [david.spenard@ag.ky.gov](mailto:david.spenard@ag.ky.gov).

An electronic copy of the cover letter for the electronic filing and the notice are attached. A copy of the request for information is provided in a Word document (attached).

Notice of the filing has been provided to the recipients listed in this e-mail.

Cordially,

David Edward Spenard  
Assistant Attorney General

David Edward Spenard  
Assistant Attorney General

The information in this e-mail (including any documents, attachments, or files that accompany the e-mail) is intended only for the use of the individual or entity to which it is addressed. The message may contain confidential information that is legally privileged and exempt from disclosure under applicable law. If you are not the intended recipient, you are notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify this office by telephone (502-696-5300) and return this message to the Office of the Attorney General immediately.

07/02/2010

28 LFUCG

Under Kentucky Rule of Evidence 503, this communication is confidential and not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal service to or on behalf of the Office of the Attorney General. Unless otherwise noted, nothing in this communication should be construed as a formal Opinion of the Office of the Attorney General under KRS 15.020. Unless otherwise noted, any assessment made through this e-mail is strictly limited to the facts presented.

07/02/2010



29 LFUCG

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**From:** Maureen Watson  
**Sent:** Tuesday, April 06, 2010 10:24 AM  
**To:** Council Members  
**Cc:** Jim Newberry - Mayor; Logan Askew  
**Subject:** On behalf of Vice Mayor Jim Gray  
**Importance:** High

**Attachments:** KAWC reso..pdf; KAWC franchise agrmt..pdf

Attached is a proposed resolution related to our earlier request to Kentucky American Water Co. (KAWC) to appear before Council to explain its requested rate increase and other matters related to the requested rate increase.

Also attached for reference is the franchise agreement between KAWC and the LFUCG.

I hope you will join me in endorsing this resolution and placing it on the docket for Thursday's Council meeting.

Thanks!

Jim

RESOLUTION NO. \_\_\_\_\_-2010

A RESOLUTION CALLING UPON THE MAYOR TO TAKE ALL APPROPRIATE ACTION, INCLUDING LEGAL ACTION, TO COMPEL REPRESENTATIVES OF KENTUCKY-AMERICAN WATER COMPANY TO APPEAR BEFORE THE URBAN COUNTY COUNCIL AS SOON AS IS PRACTICABLE TO EXPLAIN ITS REQUEST FOR A RATE INCREASE UNDER PUBLIC SERVICE COMMISSION RATE CASE NO. 2010-00036, TO RESPOND TO QUESTIONS RELATING TO THE RATE INCREASE, TO RESPOND TO QUESTIONS RELATING TO ITS APPEARANCE BEFORE THE COUNCIL IN AUGUST OF 2007, AND TO RESPOND TO QUESTIONS ABOUT OTHER RELATED MATTERS.

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WHEREAS, the citizens and businesses of Fayette County are experiencing unprecedented economic adversity and distress; and,

WHEREAS, the responsibility of our government and elected representatives is to represent our citizens in matters related to the cost of all public services, including utility services; and,

WHEREAS, the Kentucky-American Water Company ("Kentucky-American") has requested a rate increase of almost 38%, which is in addition to an 18% increase requested and approved by the Public Service Commission last year; and,

WHEREAS, this requested rate increase is based almost entirely upon the capital cost of a new \$160 million water treatment plant and pipeline; and,

WHEREAS, on March 11, 2010, the Council passed RESOLUTION 135-2010 under which the Council requested that representatives of Kentucky-American appear before the Council to explain its requested rate increase and other matters related to its rate increase; and,

WHEREAS, on March 16, 2010, by letter from Lindsey W. Ingram III, representing Kentucky-American, to Meredith Nelson, Deputy Council Clerk, Kentucky-American Water Company, refused to appear before the Council; and,

WHEREAS, on August 21, 2007, Kentucky-American appeared before the Council to explain the benefits of its capital construction plan over a competing plan in an effort to obtain the acquiescence of the Council to its capital construction plan; and,

WHEREAS, Kentucky-American conducts its operations in Fayette County under a Franchise Agreement between Kentucky-American and the Lexington-Fayette Urban County Government, dated May 16, 1995 (the "Franchise Agreement"); and,

WHEREAS, the Franchise Agreement creates reciprocal rights and obligations between Kentucky-American and the Lexington-Fayette Urban County Government, including, under Section 13(c), an obligation on the part of each party to designate representatives who are responsible for responding to requests for information related to water service in Fayette County; and,

WHEREAS, the refusal of Kentucky-American to respond to the Council's request is a violation of its duty to respond to requests for information, both explicit in the Franchise

Agreement and implied as a part of each party's legal obligation of good faith and fair dealing; and,

WHEREAS, Kentucky-American's obligation to respond is particularly compelling in light of the appearance of Kentucky-American representatives in August of 2007 to discuss the very capital project that is now the subject of the requested rate increase; and,

WHEREAS, the Council has legitimate questions relating to Kentucky-American's request for a rate increase, including questions about the capital project, information provided by Kentucky-American at the August 21, 2007 Council work session, the progress of Kentucky-American to successfully market water produced by the new plant to the neighboring municipalities, and other related matters;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That the Preamble to this Resolution be incorporated by reference as if fully set out herein.

Section 2 – That the Urban County Council requests the Mayor to take all appropriate action, including legal action, to compel representatives of Kentucky-American Water Company to appear before the Council as soon as is practicable to explain its request for a rate increase under Public Service Commission Rate Case No. 2010-00036, to respond to questions relating to the rate increase, to respond to questions relating to its appearance before the Council in August of 2007, and to respond to questions about other related matters.

Section 3 – That this Resolution shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CLERK OF URBAN COUNTY COUNCIL

PUBLISHED:

**AGREEMENT**

**THIS AGREEMENT**, effective the 16th day of May, 1995, is made and entered into by and between **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky pursuant to Chapter 67A of the Kentucky Revised Statutes, 200 East Main Street, Lexington, Kentucky 40507 and **KENTUCKY-AMERICAN WATER COMPANY**, a corporation created and existing under and by virtue of the laws of the Commonwealth of Kentucky, with its principal office at 2300 Richmond Road, Lexington, Kentucky.

**W I T N E S S E T H:**

*Water Franchise*

For and in consideration of the payment by Kentucky-American Water Company to Lexington-Fayette Urban County Government of the sum of One Hundred Dollars (\$100.00), the receipt of which is hereby acknowledged, and in further consideration of the covenants, limitations and agreements as set forth in Resolution No. 146-95 passed by the Urban County Council on April 27, 1995, a copy of which is attached hereto as Exhibit A, and in further consideration of the covenants, limitations and agreements as set out in the bid of Kentucky-American Water Company dated May 10, 1995, a copy of which is attached hereto as Exhibit B, the Lexington-Fayette Urban County Government does hereby sell, grant and convey to Kentucky-American Water Company, its successors and assigns, a water franchise and privilege to install, erect, operate and maintain a waterworks system and plant as advertised by the Lexington-Fayette Urban County Government in the Lexington Herald-Leader published May 3, 1995 in Lexington, Fayette County, Kentucky. The franchise

and privilege sold, granted and conveyed shall continue in full force and effect for a period of twenty (20) years from the effective date of this Agreement. The franchise as adopted by Resolution No. 146-95 on April 27, 1995 and the bid of Kentucky-American Water Company dated May 10, 1995 are made a part of this agreement as fully as if set out at length herein. This Agreement shall supersede and be in place of the Agreement effective May 19, 1994.

The franchise hereby sold, granted and conveyed to Kentucky-American Water Company is not exclusive and shall not be construed as being in any way exclusive of preventing the Lexington-Fayette Urban County Government from providing for the sale of similar franchises to other persons, companies or corporations.

Kentucky-American Water Company, its successors and assigns, in consideration of the grant, sale and conveyance of the above franchise, does hereby bind itself, its successors and assigns, to faithfully and fully perform each and every condition of said franchise as contained in Resolution No. 146-95 and as contained in its May 10, 1995 bid, and further to faithfully perform all acts required of it as the purchaser of said franchise.

IN WITNESS WHEREOF, the Lexington-Fayette Urban County Government by and through its Mayor and Kentucky-American Water Company by and through Roy W. Mundy, II, its properly authorized Vice President and Manager, have executed this Agreement on the dates hereinafter set forth but to be effective as of the date first above written in the opening paragraph of this Agreement.

LEXINGTON-FAYETTE URBAN COUNTY  
GOVERNMENT

BY: *Pam Miller*  
PAM MILLER, MAYOR

COMMONWEALTH OF KENTUCKY )  
  )  
COUNTY OF FAYETTE            )

The foregoing Agreement was subscribed, sworn to and acknowledged before me by Pam Miller, Mayor of Lexington-Fayette Urban County Government, for and on behalf of the Government, on this the 23<sup>d</sup> day of May, 1995.

My commission expires: 10-18-98

*Susan Lamb*  
NOTARY PUBLIC, STATE AT LARGE, KY

KENTUCKY-AMERICAN WATER COMPANY  
BY: *Roy W. Mundy II*  
ROY W. MUNDY, II, VICE  
PRESIDENT AND MANAGER

COMMONWEALTH OF KENTUCKY )  
  )  
COUNTY OF FAYETTE            )

The foregoing Agreement was subscribed, sworn to and acknowledged before me by Roy W. Mundy, II, Vice President and Manager, Kentucky-American Water Company, for and on behalf of the Company, on this the 15<sup>th</sup> day of May, 1995.

My commission expires: September 19, 1995

*Patricia Ballard*  
NOTARY PUBLIC, STATE AT LARGE, KY

RESOLUTION NO. 146-95

## A RESOLUTION CREATING AND ESTABLISHING A WATER FRANCHISE.

BE IT RESOLVED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - There is hereby created and established a water franchise and privilege granting to the purchaser thereof, whose bid may be accepted, the discretionary right to construct, erect, lay, relay, replace, operate and maintain a waterworks system and plant, embracing mains, pipelines, valves and valve boxes, hydrants, meters and meter boxes, service pipe and appurtenances, and any and all other facilities, appliances, apparatus and equipment necessary, used or useable, in the operation of a waterworks system for the purpose of supplying and to supply water to the inhabitants of Fayette County for domestic, commercial, industrial and other purposes within the right-of-ways through, upon, over, along and under bridges, viaducts, sidewalks, public places and on the main public roads and highways in Fayette County, and on all streets, avenues and roads, running off from or connected therewith either directly or indirectly, and the privilege of opening and excavating the same without the payment of license or other fee as the business of the purchaser thereof may from time to time require, in constructing, erecting, laying, relaying, replacing, operating, maintaining or removing its pipelines and other works and equipment and together also with the right to transport water through its mains and pipelines to any other mains or pipelines, laid or to be laid, which are or may be connected therewith.

Section 2 - The franchise and privilege granted and established by this resolution shall be exercised in accordance with the conditions set out herein and shall continue in full force and effect for a period of twenty (20) years beginning on the date of acceptance by the Lexington-Fayette Urban County Government of a bid therefor. Nothing contained herein shall supersede the requirements of the Code of Ordinances of the Lexington-Fayette Urban County Government.

Section 3 - Prior to the opening of any right-of-way for the

EXHIBIT A

purpose of constructing, erecting, laying, relaying, replacing, operating, maintaining and/or removing any of said pipes and appurtenances, service facilities or other equipment in the exercise of the rights herein granted, the purchaser shall obtain a permit to do so from the Mayor or the Lexington-Fayette Urban County Government Division of Engineering or from any other person or official authorized to grant same and who may be designated by the Urban County Government for such purpose, except in case of an emergency, in which event the permit shall be subsequently obtained within a reasonable time. When the purchaser enters upon any right-of-way for the purposes herein specified, it shall prosecute the work, at its own cost and expense, except when the Urban County Government has requested relocation of facilities more than once within the same government project, all costs of such second relocation shall be paid by the Urban County Government. Purchaser shall prosecute all such work with due diligence and shall dig and close up all trenches and exposed places as rapidly as possible, and shall leave the right-of-ways in the same condition as when it entered the same for said purpose or purposes, all as required by the scope and nature of the project. All such repairs shall be maintained by the purchaser for one year in as good condition as the remainder of said right-of-way; and upon completion thereof, the Lexington-Fayette Urban County Government, through its duly constituted representative, shall inspect said work and, if properly replaced and restored, shall give to the purchaser a certificate thereto or, if not, it shall give to the purchaser a detailed statement of the work necessary to be done in order to comply with all reasonable requirements or regulations of the Urban County Government in restoring the surface of said right-of-way. If the purchaser does not replace within a reasonable time the surface of any right-of-way which has been opened by the purchaser, the Urban County Government, after written notice of its intention, may replace such surface to the condition herein specified at the cost of the purchaser.

Section 4 - The purchaser in pursuance of the rights, privileges and franchise herein granted, shall not unreasonably or



unnecessarily obstruct roads or other public places or right-of-ways and during the progress of any of its works shall exercise due care in the protection of the public from accident or injury and shall hold the Urban County Government harmless from any and all damages, suits and actions, by reason of negligence of the purchaser or its employees while constructing, erecting, laying, relaying, replacing, operating, maintaining and/or removing its works or equipment.

Section 5 - The quality of water to be furnished by the purchaser and the operating conditions affecting its quality shall be in accordance with the requirements and regulations of the Environmental Protection Agency or any legally constituted federal body designated as its successor in jurisdiction, the Kentucky Natural Resources and Environmental Protection Cabinet, Division of Water or any legally constituted state body designated as its successor in jurisdiction, and the Public Service Commission or any legally constituted state body designated its successor in jurisdiction.

Section 6 - The conditions and requirements of service to the inhabitants of the Fayette County and the rates to be charged by the purchaser for such service shall be in accordance with the lawful rules, regulations and orders of the Public Service Commission of Kentucky or any legally constituted State body designated as its successor in jurisdiction.

Section 7 - It shall be the duty of the Mayor, as soon as practicable after the effective date of this Resolution, to offer for sale at public auction said franchise and privilege and it shall be sold to the highest and best bidder, at a time and place to be fixed by her, after she shall have given due notice thereof by advertising this order in full one time, not less than seven (7) days nor more than twenty-one (21) days before the time to be fixed by her, in the Lexington Herald-Leader, a newspaper of general circulation in Fayette County, Kentucky, which newspaper is published in Fayette County, Kentucky.

Section 8 - The Urban County Government or its legal successor in interest, reserves the right at any time during the effective

period of the franchise to be awarded hereby, to impose upon the successful bidder a franchise fee in an amount not to exceed three percent (3%) per annum of the "Gross Revenues" as defined herein. If any franchise fee shall be due pursuant to the authority contained herein, the purchaser shall remit to the Urban County Government or its legal successor in interest, within forty-five (45) days of the end of each and every calendar quarter beginning with January 1, April 1, July 1 and October 1 next following the enactment of any such franchise fee, the amount of said franchise fee for said quarter or applicable portion thereof, until said franchise fee shall be discontinued or until the franchise expires.

Section 9 - "Gross Revenues", for purposes of this resolution, shall include all revenues from the sale of water, service charges based upon the size of facilities, municipal fire connections and hydrants, private fire connections and hydrants, temporary service connections for construction purposes, reconnection charges, returned check charges, service line inspection fees, and bulk sales to customers in Fayette County. All other sources of revenue are excluded from "Gross Revenues".

Section 10 - The franchise or privilege hereby granted shall be vested in the purchaser thereof, upon acceptance by the Urban County Council of the bid therefor, but the purchaser shall enter into a formal contract with the Urban County Government consenting to the terms, conditions, stipulations and provisions herein contained, which contract shall be in a form acceptable to the Lexington-Fayette Urban County Government.

Section 11 - The purchaser shall pay to the Urban County Government within thirty (30) days of receipt of a request for payment the amount equal to the reasonable costs which the Urban County Government may incur in connection with the granting to the purchaser of a franchise, but in no event to exceed Two Thousand Dollars (\$2,000.00).

Section 12 -

(a) The Urban County Government shall have the right to inspect the purchaser's income and water consumption records pertaining to Gross Revenues, in order to audit and to recompute

any amounts to be paid under this resolution.

(b) Should an underpayment be discovered at any time by the Urban County Government or the purchaser, notice of the underpayment shall be sent to the non-discovering party within ten (10) days, not including Saturdays or Sundays, of discovery along with a copy of any audit or other supporting documentation. Any additional amount due to the Urban County Government shall be paid no later than ten (10) business days following receipt of the written notice. In the event that any franchise payment or recomputed amount is not made on or before the applicable dates heretofore specified, interest shall be charged from such date at the annual rate of 8%. Overpayments discovered by the Urban County Government or the purchaser shall be an adjustment on the next quarterly payment without interest.

Section 13 -

(a) Copies of all documents relating to (1) the quality of potable water, (2) the capability of the purchaser to meet service requirements, and (3) environmental releases submitted by the purchaser to any federal, state or local governmental entity having jurisdiction over the quality of potable water or purchaser's services and further required because of a deterioration in the quality of potable water or services below defined standards, shall be submitted simultaneously to the Commissioner of Public Works.

(b) Within six (6) months of the close of each fiscal year, the purchaser shall submit an annual financial report to the Commissioner of Finance prepared by a qualified financial officer in accordance with the provisions of the codification of statements on auditing standards promulgated by the American Institute of Certified Public Accountants. Within fifteen (15) days of the end of each and every month purchaser shall submit a schedule showing its revenues (exclusive of sales and city taxes) for the previous month by category described in Section 9 hereof, by revenue class, and all adjustments thereto.

(c) The purchaser and Urban County Government shall designate in writing representatives who are responsible for

responding to requests for information related to water service in Fayette County made by each.

Section 14 -

(a) In the construction, reconstruction, maintenance or removal of any of said equipment and apparatus, the purchaser shall have due regard for the rights of the Urban County Government and others, and shall not interfere with, or in any way injure the property of the Urban County Government or others, under, on or above the ground. Said purchaser shall comply with all the laws of the Commonwealth of Kentucky and ordinances of the Urban County Government as to placing lights, danger signals or warning signs and shall be liable for any and all damage that may arise by reason of its failure or neglect to comply with such ordinances and laws. Work by the purchaser hereunder shall be done in a workmanlike manner and within a reasonable time as required by the scope and nature of the project and so as not to unnecessarily interfere with public use of any of said streets .

(b) Whenever the Urban County Government or any of its departments, agencies and/or agents, servants or employees shall grade, regrade, construct, reconstruct, widen or alter any street or shall construct, reconstruct, repair, maintain or alter any other public project (including but not limited to storm sewers, sanitary sewers and street lights) therein, it shall be the duty of the purchaser, when so ordered by the Urban County Government, to change, remove, relay and relocate its equipment and apparatus in the street at its own expense so as to conform to the established grade or line of such street and so as not to interfere with such public project so constructed, reconstructed or altered, except when the Urban County Government has requested relocation of facilities more than once within the same government project, all costs of such second relocation shall be paid by the Urban County Government.

Section 15 - All tests and measurements required to be taken by the purchaser by state and federal authorities shall be recorded and maintained for as long as required by the authority and shall be made available upon request to the Urban County Government.

Section 16 - The purchaser shall not be excused from complying with any of the terms and conditions of this Resolution by any failure of the Government, upon any one or more occasions, to insist upon the purchaser's performance or to seek purchaser's compliance with any one or more of such terms or conditions.

Section 17 - The purchaser agrees not to oppose intervention by the Urban County Government in any suit or proceeding to which the purchaser is a party and which involves this franchise agreement.

Section 18 - The purchaser shall abide by all provisions of the franchise and will not at any future time make any claim that the provisions of the franchise were, as of the time written, unreasonable, arbitrary or void.

Section 19 - Time shall be deemed to be of the essence in the performance of the terms and conditions of the franchise.

Section 20 - In any controversy or dispute under this resolution, the laws of the Commonwealth of Kentucky shall apply.

Section 21 - If any section, sentence, clause or phrase of the resolution is held unconstitutional or otherwise invalid, such infirmity shall not affect the remaining parts of the resolution.

Section 22 - That this Resolution shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: April 27, 1995

/s/ Pam Miller

MAYOR

ATTEST:

/s/ Liz Darrell

CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: May 3, 1995-1t

A:\curwater.rms  
(10/22/93)

Kentucky-American Water Company

2300 Richmond Road • Lexington, Kentucky 40502

606-269-2386

Coleman D. Bush  
Business Manager

May 10, 1995

The Honorable Pam Miller  
Office of the Mayor  
200 East Main Street  
Lexington, Kentucky 40507

Dear Mayor Miller:

In response to the Lexington-Fayette Urban County Government's offer of a water franchise, Kentucky-American Water Company hereby submits a bid, check enclosed (\$100) for the advertised franchise. We understand that said franchise will be for a 20 year period as authorized by Resolution 146-95 passed by the Lexington-Fayette Urban County Council.

Please be advised that Kentucky-American has received a Certificate of Public Convenience and Necessity from the Kentucky Public Service Commission authorizing the submission of this bid.

We appreciate the opportunity to bid and will be willing to discuss any related issues.

Sincerely,

  
Coleman D. Bush

CDB:kb

Enclosure



43 LFUCG

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**From:** David Barberie  
**Sent:** Wednesday, April 07, 2010 2:43 PM  
**To:** Wuetcher, Jerry (PSC)  
**Subject:** question regarding water treatment plant bid documents

Jerry –

I hope this e-mail finds you well. I have a question related to the new KAWC treatment plant and pipeline that I was hoping you might be of some assistance in answering. I had someone ask me whether the bid documents that were submitted by KAWC regarding the construction of the treatment plant and pipeline were public documents. I seem to recall that at least initially they were submitted under seal. Do you know whether they are now publicly accessible? Any assistance would be appreciated.

**This message may contain information which is confidential or privileged and should not be disseminated to the public. If you are not the intended recipient, please advise the sender immediately by reply e-mail and delete this message and any attachments without retaining a copy. Thank you.**

David J. Barberie  
Attorney Senior  
Lexington-Fayette Urban County Government  
Department of Law (11th floor)  
200 East Main Street  
P.O. Box 34028  
Lexington, Kentucky 40588-4028  
Telephone: (859)258-3500  
Facsimile: (859)258-3538  
dbarberi@lfucg.com

07/01/2010

44 LFUCG

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**From:** David Barberie  
**Sent:** Friday, April 09, 2010 12:13 PM  
**To:** Jim Newberry; Council Members  
**Cc:** Logan Askew; Council Staff; Joseph Kelly  
**Subject:** PSC Case No. 2010-0036 (KAWC Rate Case)  
**Attachments:** lfc\_dr\_040910 (00255836).PDF; AG - Initial Requests (00255744).PDF; CAC - Initial Requests (00255743).PDF

All –

Attached for your information are copies of the discovery requests made by Lexington and the other intervenors in the KAWC rate case. Responses are due April 30, 2010. Please contact me with any questions.

**This message may contain information which is confidential or privileged and should not be disseminated to the public. If you are not the intended recipient, please advise the sender immediately by reply e-mail and delete this message and any attachments without retaining a copy. Thank you.**

David J. Barberie  
Attorney Senior  
Lexington-Fayette Urban County Government  
Department of Law (11th floor)  
200 East Main Street  
P.O. Box 34028  
Lexington, Kentucky 40588-4028  
Telephone: (859)258-3500  
Facsimile: (859)258-3538  
dbarberi@lfucg.com

07/07/2010





www.morganandpottinger.com

133 WEST SHORT STREET  
LEXINGTON, KENTUCKY 40507

TELEPHONE (859) 253-1900  
FACSIMILE (859) 255-2038

WITH OFFICES IN:  
LOUISVILLE, KENTUCKY  
NASHVILLE, TENNESSEE

RESPOND TO: *Scott White, Lexington* DIRECT DIAL: (859) 226-5288 E-MAIL: [tsw@m-p.net](mailto:tsw@m-p.net)

April 21, 2010

**VIA HAND DELIVERY**

Jim Gray, Vice Mayor  
Lexington-Fayette Urban County Government  
Main Street  
Lexington, KY 40507

Re: Proposed Resolution relating to KAWC Council Appearance

Dear Vice Mayor Gray:

I have reviewed the Memorandum prepared by Staff Attorney David Barberi of the LFUCG Law Department that was provided to you, Mayor Newberry and all members of Council.

As you know, the Memorandum opines that LFUCG lacks the power to compel the Kentucky American Water Company ("KAWC") to appear before the Council to answer questions and provide information relating to its proposed rate increase now pending before the Kentucky Public Service Commission ("PSC"). Though the Memorandum provides no substantive legal analysis, the Law Department nevertheless concludes that the proposed Resolution is defective because: (1) it authorizes the use of "legal action" to compel attendance at the scheduled meeting; (2) the Agreement between KAWC and LFUCG does not expressly provide for the power to compel KAWC to provide information; and, (3) the PSC has exclusive jurisdiction to compel information from KAWC.

Frankly, this Memorandum, again with no substantive legal analysis, not only misapprehends the applicable law, but unnecessarily excuses KAWC from an important part of this public contract . . . the obligation to communicate in good faith with LFUCG in a public manner (a Council meeting).

As a threshold matter this issue should be analyzed under the law of contracts. The rights, duties and obligations of both LFUCG and KAWC are defined by the 1995 Agreement. Here, the obligation of KAWC to respond to requests for information by LFUCG is express:

The purchaser (KAWC) and the Urban County Government shall designate in writing representatives who are responsible for responding to requests for information related to water service in Fayette County made by each.

*Agreement, September 19, 1995, incorporating Exhibit A, Resolution No.146-95 §13(c).*

Jim Gray, Vice Mayor  
April 21, 2010  
Page 2

Thus, unlike many contracts, the obligation of KAWC to provide information on request is clear, unambiguous, and express. In this context, the law is well-settled: where the language of a contract is plain and unambiguous, its meaning should be determined without reference to extrinsic facts or aids, *and it must be enforced as written*. The contract language alone determines the contract's force and effect. The intention of the parties must be gathered from that language, and from that language alone.

Thus, unlike the Law Department, it is my opinion that since the Agreement is plain on its face, then KAWC has an obligation to provide information to the City.

Moreover, it is my opinion that the Law Department is incorrect by implying that an action for specific performance would fail. Simply put, the purpose of the remedy of specific performance is to give the one who seeks the benefit of the contract the ability to compel the other party to the contract to do what he agreed to do—perform the contract on the precise terms agreed upon by the parties. In other words, a decree of specific performance is designed to remedy a breach of contract by fulfilling the legitimate expectations of the other party to the contract.

The remedy of specific performance of contracts is given as a substitute for the legal remedy of damages, or monetary compensation, if the legal remedy is inadequate or impracticable.

Applying this legal principal to the proposed Resolution, the LFUCG is simply requiring, under the terms of the contract, that KAWC appear and provide information directly relevant to the Agreement between them. *If* KAWC refuses, which would be a breach of the contract, then LFUCG certainly has the power to go to court to seek a remedy. And, since money damages would not address the breach, then specific performance would be the proper remedy. LFUCG wants the information; it has the power under the contract to obtain it; and, if KAWC refuses (which it *may not*), then it is the information LFUCG needs . . . not money damages, so that specific performance is in appropriate.

It is simply absurd to say, as the Law Department does, that a party cannot sue for breach of a contract if the contract is silent on the availability of a particular remedy. The ability of a party to go to court to obtain relief for a breach of contract is implicit as a matter of law in all contracts.

Also, it is appropriate to look at past dealings of the parties in determining the method of performance of the contract -- in this case, how LFUCG is to obtain the information from KAWC.

Jim Gray, Vice Mayor  
April 21, 2010  
Page 3

In August of 2007, representatives of KAWC appeared before the Council to advocate in favor of the new water treatment plant approved by the PSC. Because KAWC now seeks the rate increase to *pay* for that water treatment plant, KAWC should again appear before Council to answer questions about the cost of that expansion. KAWC should not be allowed to pick and choose issues in this way – seeking to co-opt the Council on the expansion proposal, but stonewalling when it comes to the actual cost of the expansion. In addition, KAWC appeared before the Council in 1993 and 1986 to lobby for similar expansions.

Finally, if, as the Law Department seems to concede, KAWC argues that rate increases are within the exclusive jurisdiction of the PSC and that this jurisdiction obviates its obligation to perform under the Agreement, then my opinion is to go straight to Court because this is a clear breach of the terms of the Agreement *and* the duty of good faith and fair dealing implied in all contracts, including the Agreement. Simply because KAWC's rate increase must be litigated in the PSC as a pre-condition to approval does not somehow negate KAWC's independent duty to perform under the terms of the Agreement in good faith.

To summarize, the opinion of the Law Department fails to recognize and apply black-letter contract law to the question posed, and even more remarkably excuses any future breach of the Agreement by KAWC. In my opinion, if the proposed Resolution is enacted, and KAWC refuses to appear and provide information as required by the Agreement, then the City should immediately go to Fayette Circuit Court and seek an injunction ordering KAWC to perform *as it agreed to do in 1995*.

If you require any further information or need to discuss this opinion in any further detail, please do not hesitate to contact me.

Respectfully,

MORGAN & POTTINGER, P.S.C.

  
Scott White (ahw)

SW/ahw

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## RESOLUTION NO. \_\_\_\_\_-2010

A RESOLUTION CALLING UPON THE MAYOR TO TAKE ALL APPROPRIATE ACTION, INCLUDING LEGAL ACTION, TO COMPEL REPRESENTATIVES OF KENTUCKY-AMERICAN WATER COMPANY TO APPEAR BEFORE THE URBAN COUNTY COUNCIL AS SOON AS IS PRACTICABLE TO EXPLAIN ITS REQUEST FOR A RATE INCREASE UNDER PUBLIC SERVICE COMMISSION RATE CASE NO. 2010-00036, TO RESPOND TO QUESTIONS RELATING TO THE RATE INCREASE, TO RESPOND TO QUESTIONS RELATING TO ITS APPEARANCE BEFORE THE COUNCIL IN AUGUST OF 2007, AND TO RESPOND TO QUESTIONS ABOUT OTHER RELATED MATTERS.

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WHEREAS, the citizens and businesses of Fayette County are experiencing unprecedented economic adversity and distress; and,

WHEREAS, the responsibility of our government and elected representatives is to represent our citizens in matters related to the cost of all public services, including utility services; and,

WHEREAS, the Kentucky-American Water Company ("Kentucky-American") has requested a rate increase of almost 38%, which is in addition to an 18% increase requested and approved by the Public Service Commission last year; and,

WHEREAS, this requested rate increase is based almost entirely upon the capital cost of a new \$160 million water treatment plant and pipeline; and,

WHEREAS, on March 11, 2010, the Council passed RESOLUTION 135-2010 under which the Council requested that representatives of Kentucky-American appear before the Council to explain its requested rate increase and other matters related to its rate increase; and,

WHEREAS, on March 16, 2010, by letter from Lindsey W. Ingram III, representing Kentucky-American, to Meredith Nelson, Deputy Council Clerk, Kentucky-American Water Company, refused to appear before the Council; and,

WHEREAS, on August 21, 2007, Kentucky-American appeared before the Council to explain the benefits of its capital construction plan over a competing plan in an effort to obtain the acquiescence of the Council to its capital construction plan; and,

WHEREAS, Kentucky-American conducts its operations in Fayette County under a Franchise Agreement between Kentucky-American and the Lexington-Fayette Urban County Government, dated May 16, 1995 (the "Franchise Agreement"); and,

WHEREAS, the Franchise Agreement creates reciprocal rights and obligations between Kentucky-American and the Lexington-Fayette Urban County Government, including, under Section 13(c), an obligation on the part of each party to designate representatives who are responsible for responding to requests for information related to water service in Fayette County; and,

WHEREAS, the refusal of Kentucky-American to respond to the Council's request is a violation of its duty to respond to requests for information, both explicit in the Franchise

Agreement and implied as a part of each party's legal obligation of good faith and fair dealing; and,

WHEREAS, Kentucky-American's obligation to respond is particularly compelling in light of the appearance of Kentucky-American representatives in August of 2007 to discuss the very capital project that is now the subject of the requested rate increase; and,

WHEREAS, the Council has legitimate questions relating to Kentucky-American's request for a rate increase, including questions about the capital project, information provided by Kentucky-American at the August 21, 2007 Council work session, the progress of Kentucky-American to successfully market water produced by the new plant to the neighboring municipalities, and other related matters;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That the Preamble to this Resolution be incorporated by reference as if fully set out herein.

Section 2 – That the Urban County Council requests the Mayor to take all appropriate action, including legal action, to compel representatives of Kentucky-American Water Company to appear before the Council as soon as is practicable to explain its request for a rate increase under Public Service Commission Rate Case No. 2010-00036, to respond to questions relating to the rate increase, to respond to questions relating to its appearance before the Council in August of 2007, and to respond to questions about other related matters.

Section 3 – That this Resolution shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CLERK OF URBAN COUNTY COUNCIL

PUBLISHED:

50 LFUCG

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**From:** David Barberie  
**Sent:** Friday, April 30, 2010 12:10 PM  
**To:** Council Members; Jim Newberry  
**Cc:** Council Staff; Joseph Kelly; Logan Askew  
**Subject:** PSC Case No. 2010-00036 (KAWC Rate Case)  
**Attachments:** KAWC Responses to LFUCG Discovery (00258495).PDF

All –

Please find attached KAWC's responses to Lexington's initial requests for information filed in the above case. Lexington has until May 14, 2010 to file requests for additional information. Please contact me with any questions.

**This message may contain information which is confidential or privileged and should not be disseminated to the public. If you are not the intended recipient, please advise the sender immediately by reply e-mail and delete this message and any attachments without retaining a copy. Thank you.**

David J. Barberie  
Attorney Senior  
Lexington-Fayette Urban County Government  
Department of Law (11th floor)  
200 East Main Street  
P.O. Box 34028  
Lexington, Kentucky 40588-4028  
Telephone: (859)258-3500  
Facsimile: (859)258-3538  
dbarberi@lfucg.com

07/07/2010

51 LFUCG

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**From:** David Barberie  
**Sent:** Tuesday, June 01, 2010 10:00 AM  
**To:** Council Members  
**Cc:** Joseph Kelly; Jim Newberry; Logan Askew; Council Staff  
**Subject:** KAWC 2010-0036  
**Attachments:** KAWC Response - LFUCG2 (00261681).PDF

All –

Please find attached for your information the responses of KAWC to Lexington's Requests for Supplemental Information in the above case. Please contact me should you have any questions.

**This message may contain information which is confidential or privileged and should not be disseminated to the public. If you are not the intended recipient, please advise the sender immediately by reply e-mail and delete this message and any attachments without retaining a copy. Thank you.**

David J. Barberie  
Attorney Senior  
Lexington-Fayette Urban County Government  
Department of Law (11th floor)  
200 East Main Street  
P.O. Box 34028  
Lexington, Kentucky 40588-4028  
Telephone: (859)258-3500  
Facsimile: (859)258-3538  
[dbarberi@lexingtonky.gov](mailto:dbarberi@lexingtonky.gov)

07/07/2010

52 LFUCG

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**From:** Spenard, David (KYOAG) [david.spenard@ag.ky.gov]  
**Sent:** Wednesday, June 09, 2010 11:54 AM  
**To:** David Barberie  
**Subject:** June 25th

David,

Please keep Friday, June 25<sup>th</sup> open.

Cordially,

David Edward Spenard  
Assistant Attorney General

The information in this e-mail (including any documents, attachments, or files that accompany the e-mail) is intended only for the use of the individual or entity to which it is addressed. The message may contain confidential information that is legally privileged and exempt from disclosure under applicable law. If you are not the intended recipient, you are notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify this office by telephone (502-696-5300) and return this message to the Office of the Attorney General immediately.

Under Kentucky Rule of Evidence 503, this communication is confidential and not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal service to or on behalf of the Office of the Attorney General. Unless otherwise noted, nothing in this communication should be construed as a formal Opinion of the Office of the Attorney General under KRS 15.020. Unless otherwise noted, any assessment made through this e-mail is strictly limited to the facts presented.

07/02/2010



53 LFUCG

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**From:** David Barberie  
**Sent:** Friday, June 11, 2010 12:15 PM  
**To:** Council Members; Jim Newberry  
**Cc:** Council Staff; Joseph Kelly; Logan Askew  
**Subject:** PSC Case No. 2010-00036  
**Attachments:** lfc\_dt\_rab\_061110 (00262868).PDF

All –

The attached testimony has been filed by Lexington in the referenced rate case. Please contact me with any questions.

**This message may contain information which is confidential or privileged and should not be disseminated to the public. If you are not the intended recipient, please advise the sender immediately by reply e-mail and delete this message and any attachments without retaining a copy. Thank you.**

David J. Barberie  
Attorney Senior  
Lexington-Fayette Urban County Government  
Department of Law (11th floor)  
200 East Main Street  
P.O. Box 34028  
Lexington, Kentucky 40588-4028  
Telephone: (859)258-3500  
Facsimile: (859)258-3538  
[dbarberi@lexingtonky.gov](mailto:dbarberi@lexingtonky.gov)

07/07/2010

54 LFUCG

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**From:** Howard, Dennis (KYOAG) [dennis.howard@ag.ky.gov]  
**Sent:** Monday, June 14, 2010 8:32 AM  
**To:** David Barberie  
**Cc:** Spenard, David (KYOAG)  
**Subject:** KAW Rate Case/Settlement Talks  
**Attachments:** KAW Barbie.pdf

Dave

See the attached letter concerning potential settlement talks with KAW.

I look forward to your response.

Dennis Howard, II  
Acting Director  
Office of Rate Intervention  
Office of the Attorney General  
1024 Capital Center Drive, Suite 200  
Frankfort, Kentucky 40601  
502.696.5453  
[dennis.howard@ag.ky.gov](mailto:dennis.howard@ag.ky.gov)

07/02/2010



COMMONWEALTH OF KENTUCKY  
**OFFICE OF THE ATTORNEY GENERAL**

JACK CONWAY  
ATTORNEY GENERAL

1024 CAPITAL CENTER DRIVE  
SUITE 200  
FRANKFORT, KENTUCKY 40601

June 14, 2010

Honorable David Jeffrey Barberie  
Corporate Counsel  
Lexington-Fayette Urban County Government  
Department of Law  
200 East Main Street  
Lexington KY 40507

Re: 2010-00036 Kentucky-American Water Company Application for Rate Increase

Dear Honorable David Barberie:

My office has been approached by Kentucky-American Water Company with a request that we meet in good faith to discuss settlement in the above captioned matter. It is with but rare exception that we refuse to do so. In the instant matter the LFUCG is obviously a party and my office believes that any settlement talks would only be fruitful if your client chooses to do likewise. Indeed, if there is a partial settlement, the Commission would hold a full evidentiary hearing. While I do not suggest that the Commission must approve a unanimous settlement, the chances of avoiding the litigation costs, time, and resources are greatly reduced if a unanimous settlement can be reached.

Accordingly, I inquire as to whether your client will consider negotiating with the company in the pending rate case. Moreover, and if so, would the date of June 25<sup>th</sup> be available for you given the time constraints at hand?

I thank you in advance for your attention to this inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis Howard II".

Dennis Howard II  
Acting Director  
Office of Rate Intervention



56 LFUCG

**From:** Leslye Bowman  
**Sent:** Tuesday, June 15, 2010 2:28 PM  
**To:** 'Howard, Dennis (KYOAG)'  
**Cc:** David Barberie; Logan Askew  
**Subject:** RE: KAW Rate Case/Settlement Talks?

LFUCG will participate in settlement discussions with AG and KAWC on June 25. Please let Dave Barberie know when and where.

*Leslye M. Bowman*  
 Director of Litigation  
 Department of Law  
 Lexington-Fayette Urban  
 County Government  
 200 East Main Street  
 Lexington, Kentucky 40507  
 Phone - 859-258-3510  
 Fax - 859-258-3538

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**From:** Howard, Dennis (KYOAG) [mailto:dennis.howard@ag.ky.gov]  
**Sent:** Monday, June 14, 2010 10:30 AM  
**To:** Leslye Bowman  
**Subject:** RE: KAW Rate Case/Settlement Talks?

I just left a message for you on the cell. FYI.

Dennis Howard, II  
 Acting Director  
 Office of Rate Intervention  
 Office of the Attorney General  
 1024 Capital Center Drive, Suite 200  
 Frankfort, Kentucky 40601  
 502.696.5453  
[dennis.howard@ag.ky.gov](mailto:dennis.howard@ag.ky.gov)

---

**From:** Leslye Bowman [mailto:lbowman@lexingtonky.gov]  
**Sent:** Monday, June 14, 2010 9:53 AM  
**To:** Howard, Dennis (KYOAG)  
**Subject:** RE: KAW Rate Case/Settlement Talks?  
**Importance:** High

Dennis- just tried to call you at office. They said you were out but apparently you are monitoring email. Give me a call- office- 859-258-3510 or cell 859-494-9050

*Leslye M. Bowman*

07/02/2010

57 LFUCG

Director of Litigation  
Department of Law  
Lexington-Fayette Urban  
County Government  
200 East Main Street  
Lexington, Kentucky 40507  
Phone - 859-258-3510  
Fax - 859-258-3538

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---

**From:** Howard, Dennis (KYOAG) [mailto:dennis.howard@ag.ky.gov]  
**Sent:** Monday, June 14, 2010 9:33 AM  
**To:** Leslye Bowman  
**Subject:** FW: KAW Rate Case/Settlement Talks?

Leslie

I hope all is well. Please see the attached email which I sent to David this morning. I would appreciate a response at your earliest convenience given the time constraints at hand.

Dennis Howard, II  
Acting Director  
Office of Rate Intervention  
Office of the Attorney General  
1024 Capital Center Drive, Suite 200  
Frankfort, Kentucky 40601  
502.696.5453  
[dennis.howard@ag.ky.gov](mailto:dennis.howard@ag.ky.gov)

---

**From:** Howard, Dennis (KYOAG)  
**Sent:** Monday, June 14, 2010 8:32 AM  
**To:** dbarberi@lfucg.com  
**Cc:** Spenard, David (KYOAG)  
**Subject:** KAW Rate Case/Settlement Talks

Dave

See the attached letter concerning potential settlement talks with KAW.

I look forward to your response.

Dennis Howard, II  
Acting Director  
Office of Rate Intervention  
Office of the Attorney General  
1024 Capital Center Drive, Suite 200  
Frankfort, Kentucky 40601  
502.696.5453

07/02/2010

[dennis.howard@ag.ky.gov](mailto:dennis.howard@ag.ky.gov)

**Lexington-Fayette Urban County Government's Responses  
to Data Requests of Kentucky-American Water Company  
Case No. 2010-00036**

WITNESS RESPONSIBLE:  
Counsel

4. Please provide a copy of all correspondence to or from anyone affiliated with the LFUCG and Mr. Baudino concerning this rate case.

**RESPONSE:**

Lexington objects based upon relevancy and further objects to the production of any documents protected by the attorney-client privilege and/or work product doctrine. Without waiving the objections above, Lexington states that Mr. Baudino has been retained for the purposes discussed in his filed testimony at an hourly rate of \$225, with a cost ceiling of \$20,000 through hearing, plus expenses.

**Lexington-Fayette Urban County Government's Responses  
to Data Requests of Kentucky-American Water Company  
Case No. 2010-00036**

WITNESS RESPONSIBLE:  
Counsel

5. Please provide a copy of all correspondence to or from anyone affiliated with the LFUCG and the Attorney General's office concerning this rate case.

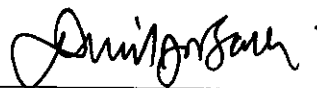
**RESPONSE:**

Lexington objects based upon relevancy, and further objects to the production of any documents protected by the attorney-client privilege and/or work product doctrine. Without waiving the objections above, the documents not previously provided to KAWC as part of the general correspondence in this case have been provided in response to Question No. 3, above.



**CERTIFICATION**

This is to certify that I supervised the preparation of Lexington-Fayette Urban County Government's responses to Data Requests of Kentucky-American Water Company and that the responses are true and accurate to the best of my knowledge, information and belief formed after reasonable inquiry.



David J. Barberie

July 9, 2010

X:\Cases\MAYOR\10-LP0179\PLE\00265516.DOC