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Governor

Leonard K. Peters
Secretary
Energy and Environment Cabinet

Commonwealth of Kentucky
Public Service Commission
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Frankfort, Kentucky 40602-0615
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David L. Armstrong
Chairman

James W. Gardner
Vice Chairman

Charles R. Borders
Commissioner

August 4, 2010

Leslye M. Bowman, Esq.
David Jeffrey Barberie, Esq.
Lexington-Fayette Urban County Government
Department Of Law
200 East Main Street
Lexington, Kentucky 40507

Dennis G Howard II, Esq.
David E. Spenard, Esq.
Utility and Rate Intervention Division
1024 Capital Center Drive
Suite 200
Frankfort, Kentucky 40601-8204

Lindsey W Ingram, III, Esq.
Stoll Keenon Ogden PLLC
300 West Vine Street
Suite 2100
Lexington, Kentucky 40507-1801

A.W. Turner, Esq.
Kentucky-American Water Company
2300 Richmond Road
Lexington, Kentucky 40502

Iris G Skidmore, Esq.
415 West Main Street, Suite 2
Frankfort, Kentucky 40601

Re: Case No. 2010-00036
Kentucky-American Water Company

Ladies and Gentlemen:

The enclosed memorandum has been filed in the record of the above-referenced case. Any comments regarding this memorandum's contents should be submitted to the Commission within five days of receipt of this letter. Any questions regarding this memorandum should be directed to Gerald Wuetcher, Attorney/Executive Advisor, at (502) 564-3940, Extension 259.

Sincerely,

Jeff Derouen
Executive Director

gw
Enclosure

cc: Parties of Record

INTRA-AGENCY MEMORANDUM
KENTUCKY PUBLIC SERVICE COMMISSION

TO: Case File No. 2010-00036

FROM: Gerald Wuetcher **GPW**
Executive Advisor/Attorney

DATE: August 4, 2010

RE: Conference of July 28, 2010

On July 28, 2010, the Commission held an informal conference in this case in the Commission's offices in Frankfort, Kentucky. Present were:

Lindsey Ingram III	-	Kentucky-American Water Company
A.W. Turner	-	Kentucky-American Water Company
David Spenard	-	Office of Attorney General
David Barberie	-	Lexington-Fayette Urban County Government
Iris Skidmore	-	Community Action Council
Jack Burch	-	Community Action Council
Charles Lanter	-	Community Action Council
Eddie Beavers	-	Commission Staff
Mark Frost	-	Commission Staff
Todd Osterloh	-	Commission Staff
Sam Reid	-	Commission Staff
Gerald Wuetcher	-	Commission Staff

By its Order of March 17, 2010, the Commission directed that the conference be convened for the purpose of considering the possibility of settlement, the simplification of issues and any other matters that might aid in the handling or disposition of this case.

Beginning the conference, Mr. Wuetcher stated that Commission Staff would prepare minutes of the conference for the case record, that a copy of these minutes would be provided to all parties, and that all parties would be given an opportunity to submit written comments upon those minutes.

The parties discussed and reached agreement on a number of procedural issues. They agreed that no change should be made to the prohibition against opening or closing statement at hearing that is set forth in the Order of March 17, 2010. They agreed that evidence should be presented in the following order:

Kentucky-American Water Company
Attorney General
Community Action Council
Lexington-Fayette Urban County Government

They further agreed that cross-examination would be in the following order:

Kentucky-American Water Company
Attorney General
Community Action Council
Lexington-Fayette Urban County Government
Commission Staff

The participants discussed the order in which they would present their witnesses. Mr. Ingram stated that the parties had discussed stipulating the testimony of witnesses Vander Weide, Woolridge, and Baudino and were close to an agreement on this issue. In response to an inquiry from Mr. Ingram, Mr. Wuetcher stated that Commission Staff would advise the parties if it had questions for these witnesses that would require the witnesses to appear at the hearing. He stated that, if Commission Staff had questions for any of these witnesses, it would consider submitting those questions in writing in lieu of live cross-examination. The participants discussed other witnesses whose appearance might not be necessary, but no agreement was reached. All parties stated that they would continue to review the matter. Mr. Ingram stated that he would advise Commission Staff by August 2, 2010 on the order of Kentucky-American's witnesses.

[Mr. Ingram advised Commission Staff on July 31, 2010 that the parties had agreed, subject to Commission Staff's concurrence, that the testimony of witnesses Vander Weide, Woolridge, Baudino, Spitznagel and Herbert would be stipulated and that they would not appear at the hearing. On August 2, 2010, Commission Staff advised the parties that it did not object to this arrangement with regards to Vander Weide, Woolridge, and Baudino. On August 4, 2010, it noted its concurrence with the arrangement regarding Spitznagel and Herbert. (See the attached electronic mail messages.)]

Mr. Ingram noted that Kentucky-American witnesses Baryenbruch and Warren were available to testify only on August 10, 2010. Each had to make appearances at other proceedings on August 11, 2010 and must take evening flights departing Lexington on August 10, 2010 to make these appearances.

The participants discussed advancing the time for the hearing from 10:00 a.m. to 9:00 a.m. Counsel for all parties indicated that they favored such action and further did not object to the hearing continuing beyond normal business hours. Mr. Wuetcher

stated that Commission Staff would advise the Commission of the parties' positions on this matter.

Mr. Wuetcher noted that no written transcript of the hearing would be prepared. The only transcript would be a video transcript. He noted that a member of Commission Staff would be annotating the video transcript for key events (e.g., arguments, motions, start and completion of cross-examination by each counsel). Access to these annotations required the use of special viewing software, which the Commission would make available to the parties. Mr. Wuetcher stated that, when offering exhibits into evidence at the hearing, the exhibit should be handed to the Commission Staff member who is operating the video logging system and who will be seated where the court reporter previously sat. Mr. Wuetcher also stated that, when labeling or marking exhibits, the parties should identify the exhibit by the party's name and a sequential number. References to a witness or type of examination will not be necessary.

The participants agreed that written briefs should be filed simultaneously no later than September 3, 2010. No party wished the opportunity to file rebuttal testimony. Mr. Ingram inquired how references to the video transcript should be cited in the written briefs. Noting that two methods are currently used, Mr. Wuetcher stated that the procedural order for the hearing would provide some guidance on that issue.

Mr. Spenard noted that the Commission had yet to rule on the Attorney General's Motion to Compel KAWC to Provide Consolidated Accounting Information. Mr. Wuetcher advised that the Commission would attempt to issue a ruling on the motion before August 6, 2010.

The conference then adjourned.

Attachments

cc: Parties of Record

From: Ingram III, Lindsey [L.Ingram@skofirm.com]
Sent: Monday, August 02, 2010 1:16 PM
To: Wuetcher, Jerry (PSC); Osterloh, Todd (PSC)
Cc: Spenard, David (KYOAG); dbarberi@ifucg.com; batesandskidmore@gmail.com; A.Turner@amwater.com
Subject: KAW Rate Case

Jerry/Todd:

I have conferred with D. Spenard, Iris and D. Barberie and all are in agreement that the three ROE witnesses (Vander Weide, Woolridge, Baudino) do not need to appear for cross-examination (we indicated this to Todd on the phone last Friday).

I also report to you that all of us are in agreement that Dr. Spitznagel and Paul Herbert do not need to appear for cross-examination.

Of course, our agreement relating to these 5 witnesses is subject to Commission approval. Please advise at your first convenience. Thank you.

Lindsey W. Ingram III
Stoll Keenon Ogden PLLC
300 W. Vine St.
Suite 2100
Lexington, KY 40507
859-231-3982 (direct dial)
859-221-0997 (cell)
859-246-3672 (direct fax)
L.ingram@skofirm.com

From: Wuetcher, Jerry (PSC)
Sent: Monday, August 02, 2010 1:53 PM
To: Ingram III, Lindsey; Osterloh, Todd (PSC)
Cc: Spenard, David (KYOAG); dbarberi@lfucg.com; batesandskidmore@gmail.com; A.Turner@amwater.com
Subject: RE: KAW Rate Case

Tracking:	Recipient	Read
	Ingram III, Lindsey	
	Osterloh, Todd (PSC)	Read: 8/2/10 2:09 PM
	Spenard, David (KYOAG)	Read: 8/2/10 2:04 PM
	dbarberi@lfucg.com	
	batesandskidmore@gmail.com	
	A.Turner@amwater.com	

Lindsey:

As of this time, Commission Staff sees no need for the appearance of the 3 ROE witnesses to answer Staff questions. It is still possible that Staff may have some written questions for these witnesses. I will confer with staff and advise as to Dr. Spitznagel and Paul Herbert.

Respectfully,

Gerald E. Wuetcher
Executive Advisor
Public Service Commission of Kentucky
(502) 564-3940, Extension 259
(502) 229-6500 (cell)
gerald.wuetcher@ky.gov

From: Ingram III, Lindsey [mailto:L.Ingram@skofirm.com]
Sent: Monday, August 02, 2010 1:16 PM
To: Wuetcher, Jerry (PSC); Osterloh, Todd (PSC)
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L.ingram@skofirm.com

8/4/10

From: Wuetcher, Jerry (PSC)
Sent: Wednesday, August 04, 2010 10:40 AM
To: Ingram III, Lindsey
Cc: Spenard, David (KYOAG); dbarberi@lfucg.com; batesandskidmore@gmail.com; A.Turner@amwater.com; Osterloh, Todd (PSC)
Subject: RE: KAW Rate Case

Tracking: **Recipient** **Read**
Ingram III, Lindsey
Spenard, David (KYOAG)
dbarberi@lfucg.com
batesandskidmore@gmail.com
A.Turner@amwater.com
Osterloh, Todd (PSC) **Read:** 8/4/10 10:48 AM

Lindsey:

I apologize for the late response. Commission Staff has no objection to the parties' stipulating the written testimony of Dr. Spitznagel and Paul Herbert. It does not have any questions for either. As we complete our pre-hearing review of the record, should we find any need to clarify a point contained in their written testimonies or responses to information requests, we reserve the right to submit written questions on those points.

Commission Staff is attempting to draft an order addressing hearing procedure. If possible, could KAWC submit its expected witness lineup by COB today?

Sincerely,

Jerry

Gerald E. Wuetcher
Executive Advisor
Public Service Commission of Kentucky
(502) 564-3940, Extension 259
(502) 229-6500 (cell)
gerald.wuetcher@ky.gov

From: Ingram III, Lindsey [mailto:L.Ingram@skofirm.com]
Sent: Wednesday, August 04, 2010 8:52 AM
To: Wuetcher, Jerry (PSC); Osterloh, Todd (PSC)
Cc: Spenard, David (KYOAG); dbarberi@lfucg.com; batesandskidmore@gmail.com; A.Turner@amwater.com
Subject: RE: KAW Rate Case

Jerry/Todd:

I certainly don't mean to be a pest, but am curious as to Dr. Spitznagel and Paul Herbert so decisions can be made for their flights, etc. Have you been able to learn anything regarding the Commission's need for them to appear?

Lindsey

From: Wuetcher, Jerry (PSC) [mailto:JWuetcher@ky.gov]
Sent: Monday, August 02, 2010 1:53 PM
To: Ingram III, Lindsey; Osterloh, Todd (PSC)

8/4/10

Cc: Spenard, David (KYOAG); dbarberi@lfucg.com; batesandskidmore@gmail.com; A.Turner@amwater.com
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8/4/10