

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ADJUSTMENT OF RATES OF KENTUCKY-) CASE NO.
AMERICAN WATER COMPANY) 2010-00036

**POST-HEARING BRIEF OF COMMUNITY ACTION COUNCIL OF LEXINGTON-
FAYETTE, BOURBON, HARRISON, AND NICHOLAS COUNTIES**

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Comes the Community Action Council for Lexington-Fayette, Bourbon, Harrison and Nicholas Counties, Inc. (CAC), by counsel, and submits for the Commission's consideration the following Post-Hearing Brief in opposition to the rate increase sought by Kentucky American Water Company (KAWC):

BACKGROUND

CAC's direct testimony was presented through Jack E. Burch, CAC's Executive Director since 1979, and the founder and President of WinterCare Energy Fund. (Pre-Filed Testimony of Jack E. Burch, p. 2). CAC is a not for profit community action agency of the Commonwealth of Kentucky established in 1965. It operates 33 neighborhood and community centers and child development centers in six counties in central Kentucky, and its mission is to combat poverty. (Pre-Filed Testimony of Jack E. Burch, p. 2-3). CAC administers numerous programs in partnership with utilities, including Kentucky American Water Company's Help to Others (H2O) Program throughout KAWC's service area. (Pre-Filed Testimony of Jack E. Burch, p. 3). CAC presented a unique perspective in the administrative hearing of KAWC's request for a rate increase in that CAC was the only party that offered testimony of the effect of the proposed rate increase on low income customers. This testimony was unrebutted. This testimony is also credible. Mr. Burch and his staff at CAC have extensive experience and contact with, and

knowledge of the low-income population's problems related to utilities. (Pre-Filed Testimony of Jack E. Burch, pp. 4-7).

ARGUMENT

I. THE PROPOSED RATE INCREASE IS NOT FAIR, JUST, AND REASONABLE FOR KAWC IN LIGHT OF ITS IMPACT ON LOW INCOME CUSTOMERS AND THE ECONOMIC CLIMATE IN WHICH KAWC OPERATES IN CENTRAL KENTUCKY.

15.9 Percent of KAWC Customers are Living in Poverty

It is clear from the un rebutted testimony of Jack E. Burch that KAWC's proposed rate increase will impose serious hardship on KAWC's low-income customers and is not "fair, just, and reasonable" given the number of persons in the service area that are living in poverty. (See KRS 278.030(1)). Based on Census data and the customer information provided by KAWC, there are approximately 17,396 KAWC customers living in poverty throughout the service area including 15,936 customers in Fayette County alone. This amounts to at least 15.9 percent of KAWC's customer base. (Pre-Filed Testimony of Jack E. Burch, p. 8). It is significant to note that these statistics represent 100% of the Federal Poverty Guideline, and that this standard is somewhat outdated and is being revised because it does not capture the full extent of persons living in poverty. (*Id.*).

It is also undisputed by KAWC that with each successive rate increase, shutoffs for nonpayment increase significantly. Based on KAWC's own available data on shutoffs for nonpayment, shutoffs have increased dramatically between 2004 and the present. After a KAWC rate increase in 2004, the number of customers who experienced shutoffs increased 189% to 12,457 in 2005. That figure then more than doubled in 2007 to 27,569 following another rate increase. After the rate increase approved as a result of the settlement agreement in 2007, the trend continued to more than 30,220 in 2008, and 30,621 in 2009. (Pre-Filed Testimony of Jack E. Burch, p 9).

In recognition of the fact that there are more people living in poverty than the outdated guidelines reflect, the Help to Others (H2O) Program, funded by KAWC shareholder funds and customer donations assists families up to 150% of the federal poverty guidelines. (Pre-Filed Testimony of Jack E. Burch, p, 8). While Help to Others (H2O) can provide up to \$100 in benefits per year for eligible participants for water service, activation fees, and reactivation fees, that program is inadequately funded to help the number of eligible customers and can only assist a fraction of the accounts disconnected for nonpayment. In 2008, H2O provided benefits to 907 customers, which is approximately 3% of the number of accounts shut off for nonpayment that year. (Pre-Filed Testimony of Jack E. Burch, pp. 7, 10). Mr. Burch's unrebutted testimony was that as of August 11, 2010, the second day of the hearing, there have been 952 approved applications for water bill assistance this year, and that CAC projects that the H2O fund will be depleted by September 1, 2010. (Video Transcript, August 11, 2010, 15:17:03 – 15:18:03).

KAWC questioned Mr. Burch concerning the amount of its shareholder contributions to H2O in 2010, and Mr. Burch confirmed that it was \$60,000, made in two payments—one payment of \$50,000 and one payment of \$10,000. (Video Transcript, August 11, 2010, 15:21:52–15:22:27 and 15:22:28-15:23:28). CAC appreciates KAWC stating in Hearing Data Request No. 10 that it expects to continue to give to H2O at the same level assuming there is need and that CAC administers the program. CAC asks that the Commission encourage KAWC to increase its shareholder contributions to H2O so that funds are not depleted so early in the year.

KAWC's Michael A. Miller admitted that customer contributions to H2O are small, only slightly more than \$1000 in 2009. (Video Transcript, August 11, 2010, 10:19:10-10:20:04). Contributions for the first six (6) months of 2010 were only \$380. (Pre-Filed Testimony of Jack E. Burch, p. 10.) KAWC introduced an email to Nick Rowe dated July 30, 2010, in which

KAWC employee Susan Lancho discussed making additional effort to increase brand awareness for its H2O program to verify the company's commitment to encouraging customer donations. (KAWC Cross Examination Exhibit 11). CAC appreciates and encourages any additional effort to raise awareness of H2O that has been committed by the company as a result of this rate case, and urges the Commission to order KAWC to act on its commitment.

The Faces of Poverty

Additionally, this rate increase must be considered in light of the unemployment rate in Fayette County of 7.7 percent and more than 10% state wide (which is more reflective of the service area beyond Fayette County). (Pre-Filed Testimony of Jack E. Burch, p. 11). The proposed rate increase will amount to 3.9% of a one person household's monthly income at the federal poverty level and 1.9% of the monthly income of a family of four at the federal poverty level. (Pre-Filed Testimony of Jack E. Burch, p. 12). Families are already forced to make choices about basic needs. As these families' incomes fall below the federal poverty guideline, the rate increase will amount to a greater percentage of their incomes.

CAC put faces on this rate increase with CAC Exhibit 1, which is comprised of 753 personal stories from CAC clients. These handwritten narratives provide a clear and vivid picture of how the proposed rate increase will affect these low income families and the daily choices they have to make. Many are on fixed incomes, elderly, unemployed, or single parents, and will have difficulties paying for the other necessities of life, including food and medicine.

Michael A. Miller admitted that KAWC does not compile its own statistics as to how its rate increases affect its customers as a percentage of monthly income at the federal poverty level and does not compile statistics at all of the impact of its rate increases on its low income customers. (Video Transcript, August 11, 2010, 09:59:50-10:00:11).

Michael A. Miller, both in his rebuttal testimony and under cross examination, referred to the inability of KAWC's low income customers to pay their water bills as a "social issue." (Rebuttal Testimony of Michael A. Miller, p. 74; Video Transcript, August 11, 2010, 09:55:08-55:50). He maintained this view while acknowledging that water is a fundamental necessity of life, that KAWC is the public water supplier with a franchise in the area, and that customers cannot get water cheaper elsewhere. (Video Transcript, August 11, 2010, 09:56:00-56:30). However, when questioned if it was more than a social issue when the company experienced 30,621 accounts shut off in 2009, Mr. Miller stated, "No, I think . . . I want to stay to the business side of this right now." (Video Transcript, August 11, 2010, 09:56:31-57:56). He went on to explain that if people do not pay, the company goes through a lengthy process, including referring some people to CAC, and eventually if there is no payment, service is terminated. (*Id.*).

Mr. Miller also acknowledged that the company charges a reconnect fee of \$26.00, and that there is a cost every time the company shuts someone off for nonpayment. When asked if this reconnect fee allowed the company to recover all the costs incurred in a shut-off, he stated: "I won't say its all costs, we haven't updated that in a couple of cases." (Video Transcript, August 11, 2010, 09:58:24-59:27). Mr. Miller admitted that when there is a shut off, the company cannot get another water fee until a new customer signs up. (Video Transcript, August 11, 2010, 09:59:40-59:50). CAC maintains that such a large number of shut offs does in fact cost the company money, and ultimately all rate payers. When a customer leaves the system or does not pay, there are fewer customers contributing to the overall costs of providing that service, and other customers are subsidizing the customers who do not pay. (Video Transcript, August 11, 2010, 15:30:39-15:31:24).

KAWC's Dismissal and Disregard for the Economic Climate in its Service Area

The Commission staff's cross examination of Mr. Miller about KAWC's incentive plan was enlightening in that it shows the company's dismissive attitude and apparent disregard for the economic climate in which it operates, and the hardships that so many of its ratepayers face every day. Mr. Wuetcher questioned Mr. Miller about the necessity of the company's additional incentive plan in light of the current difficult financial times where other industries are eliminating or furloughing employees and in light of the projected salary increases (3% for union employees, 3% for salary employees, and 3½% for non-union hourly employees) that are already built in to the forecasted test period. (Video Transcript, August 11, 2010, 11:01:24- 11:02:46; 11:00:00 -11:01:23). Mr. Miller stated that without the incentive plan the company will lose some employees, and he does not think that is "fair." (Video Transcript, August 11, 2010, 11:04:06-11:04:14). He went on to state (about KAWC's employees): "I don't think they should be hurt in hard financial times, particularly if it's part of our overall compensation plan." (Video Transcript, August 11, 2010, 11:04:38-11:04:54). CAC urges the Commission to disallow the incentive plan costs in calculation of the revenue requirement. In addition, CAC contends that there are many KAWC customers who have been hurt in these "hard financial times", and the rate increase does not appear "fair" to them. KAWC has not met its burden of showing that the rate increase it seeks is just and reasonable. (See KRS 278.190(3)), and the Commission should order a lower amount as argued by the Attorney General.

II. KAWC SHOULD BE ORDERED TO BETTER TRACK ACCOUNTS PAID AFTER THE DUE DATES.

It is evident from KAWC's responses to CAC's data requests and from the testimony of Michael A. Miller that KAWC does not consider it important to track how many of its customers pay their bills after the due date, the frequency of paying the bills late, and which of these customers are eventually shut off. On the one hand, Michael A. Miller maintained in his cross-

examination that KAWC knows which customers pay late because of the accounts receivable files. (Video Transcript, August 11, 2010, 10:00:52-10:01:53). On the other hand, in response to Question 1 of CAC's second data request: "Does the Company keep records of which and/or how many of its residential accounts are paid late," Mr. Miller responded that the accounts receivable file has the payment date, and the billing file has the billing date, and the "company would have to perform extensive analysis and merger of both files for each customer, for each month for the five year period." He went on to say it was unduly burdensome to generate a report. (See CAC Cross-Examination Exhibit 2). However, CAC asked in Question 2 of its second data request for the company to produce the information on late payment of accounts in whatever format it is kept annually for the past five years, and KAWC produced nothing. (See Supplemental Request for Information on Behalf of CAC).

Additionally, KAWC's billing system does not track whether shutoffs are due to non-payment of water, water/sewer/ or sewer. (KAW Response to Hearing Data Request, Question 14). With respect to its contract with LFUCG, KAW stated that payments are applied to outstanding balances in the priority of "(1) KAWC Water Charges, (2) LFUCG Water Quality Charge, (3) LFUCG Landfill Charges, and (4) LFUCG Sewer Charges." (*Id.*).

CAC urges that KAWC must be more accountable to give a true picture of how many of its customers are struggling to pay their bills. In response to a question from the Commission, Mr. Burch stated that late payment data is an even better indicator of affordability than shut off data. (Video Transcript, August 11, 2010, 15:42:16-15:42:19). Examination of the number of accounts paid after the due date, yet do not result in a shutoff, would be helpful in assessing the burden that the company's rates place on its low-income customers. KAWC appears to be out of touch with those customers who are most vulnerable.

III. KAWC SHOULD BE ORDERED TO RESTRUCTURE ITS RATES TO ALLEVIATE THE AFFORDABILITY GAP.

Low income persons in the KAWC service area are already experiencing an affordability gap. A sizeable rate increase of the extent proposed by KAWC will only exacerbate this problem. In his testimony, Jack E. Burch proposed tiered or graduated rates that would provide a minimum quantity of water at a very low cost and then increase with consumption as a solution to the increasing affordability gap. (Video Transcript, August 11, 2010, 15:33:26-15:34:20; Pre-Filed Testimony of Jack E. Burch, pp. 13-14). Mr. Burch testified that in the world of community action networks he has seen a nexus in the interests of affordability and conservation and has concluded that tiering rates based on usage, can meet both goals. Both interests are furthered by using less water, making it more affordable and preserving a precious resource. Providing a minimum quantity of water inexpensively as possible and increasing rates as consumption increases benefits **all** customers, especially those on low or fixed incomes, by giving them some control over their monthly water costs. This would also encourage those who can better afford water to be more conservative in its use. (Video Transcript, August 11, 2010, 15:33:26-15:34:20). Water is becoming a scarce commodity, and judicious use of water is critical to the future. CAC urges that now is the time to address this issue and that tiered rates can be used for that purpose without causing harm and shock to our major industries. (Video Transcript, August 11, 2010, 15:40:27- 15:41:20). The Commission should not allow KAWC customers to believe that the supply of water is endless, or allow KAWC to build more infrastructure in the future to make more water available for unlimited use, placing the costs on the backs of ratepayers, particularly those least able to afford it.

CAC urges the Commission to consider Mr. Burch's testimony concerning a graduated or tiered rate structure, and order KAWC to work with the Attorney General, low income advocates, and other interested parties to design a rate system based on this concept.

IV. IN THE ALTERNATIVE, KAWC SHOULD BE ORDERED TO WORK WITH CAC, THE COMMISSION STAFF, AND THE ATTORNEY GENERAL FOR A SOLUTION TO THE AFFORDABILITY ISSUE.

Michael A. Miller testified that KAWC is “perfectly willing to work with the CAC and any other party to this case to find some solution that is allowed under the regulations and state law of Kentucky to address low income customers’ problems in paying the bill. (Video Transcript, August 11, 2010, 10:05:34-10:05:58). However, Mr. Miller stated the company’s position that any solution has to be tied to the service charge. He said that the company is willing to pursue a legislative adjustment of the service charge for low income customers. He stated the company’s willingness for a cooperative effort to sit down with CAC, the Attorney General and Commission staff and come up with proposed language to address the problem of low income customers. (Video Transcript, August 11, 2010, 10:12:57-10:17:02; 10:57:52-10:18:24).

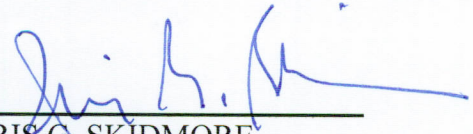
The Attorney General is also willing to look at all possible remedies and work diligently to find multiple solutions to the affordability issue. (Video transcript, August 11, 2010, 15:32:09-15:32:33).

CAC urges the Commission to order a collaborative effort that would include Commission staff to address the affordability issue. CAC also urges the Commission to make KAWC accountable to the Commission by mandatory reporting of progress made in this effort.

CONCLUSION

Low income persons are forced to make difficult choices in paying for essential services, shelter, and medicine. Each time their utility bills go up, these choices become more difficult. CAC supports and urges adoption of the position of the Attorney General that the requested rate increase is too great. CAC also requests that the Commission take a pro-active stand with the recommendation of graduated rates based on usage in order to control the affordability gap and encourage water conservation.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that CAC's Sept. 3, 2010 electronic filing is a true and accurate copy of the Post-Hearing Brief of Community Action Council for Lexington-Fayette, Bourbon, Harrison, and Nicholas Counties, Inc. filed in paper medium; and that on Sept. 3, 2010 the electronic filing has been transmitted to the Commission, an original and one copy of the filing has been delivered to the Commission, and electronic mail notification of the electronic filing is provided to the following:

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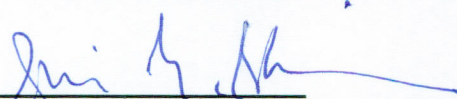
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