

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY AMERICAN)	
WATER COMPANY FOR A CERTIFICATE OF)	CASE NO.
PUBLIC CONVENIENCE AND NECESSITY)	2012-00096
AUTHORIZING THE CONSTRUCTION OF THE)	
NORTHERN DIVISION CONNECTION)	

**LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT'S BRIEF**

Comes now the Lexington-Fayette Urban County Government ("Lexington"), by counsel and submits its Brief in this matter. To the extent that the arguments and positions of the Attorney General do not otherwise conflict with this Brief, Lexington also fully adopts and incorporates them herein.

I. BACKGROUND

Kentucky-American Water Company ("KAWC") seeks to address a water treatment issue within its Northern Division through a connection to its KRS II treatment facility ("KRS II") a mere 2 years after it was completed to purportedly address a water treatment deficit within its Central Division. Although KAWC represents that the water utilized from the plant will not diminish the amount of water made available to the Central Division, the proposal would establish a precedent for the possible expansion of KAWC's system through the use of a treatment plant established for the benefit of the Central Division customers. Moreover, KAWC proposes that the Central Division pay for the cost of this proposal even though it is of no benefit to them.

II. FACTS

KAWC obtained the Owenton water system in 2005. (See e.g., Public Service Commission Case No. 2005-00206). It was aware of significant treatment issues at the facility at the time it was acquired. (Hearing Testimony of Linda Bridwell, 10-16-12, 14:51:52-14:51:20, 14:53:10-14:53:27). It chose not to address them as part of the proceeding when the KRS II project was approved. (KAWC Response to Attorney General's Supplemental Request for Information No. 6).

The KRS II project was built to address the water deficit issue in Central Kentucky. (Hearing Testimony of Cheryl Norton, 10-16-12, 10:39:00-10:39:15; KAWC Response to Attorney General's Supplemental Request for Information No. 6). KAWC believes that its Central Division's customers should pay for the proposed facilities in this case. (KAWC Response to Commission Staff's First Request for Information No. 79; KAWC Response to Lexington-Fayette Urban County Government Supplemental Request for Information No. 4). The proposed facilities are of no quantifiable benefit to the Central Division. (KAWC Response to Lexington-Fayette Urban County Government Supplemental Request for Information No. 2). The proposed facilities may result in some water shortage issues for Central Division customers in the event of a drought. (KAWC Response to Lexington-Fayette Urban County Government Supplemental Request for Information No. 3).

The proposed facilities may require KAWC to seek expanded treatment capacity (also at the expense of the Central Division customers) at an earlier point in time.

(KAWC Response to Lexington-Fayette Urban County Government Supplemental Request for Information No. 3). KAWC believes that KRS II could also be used as a source of expansion. (Hearing Testimony of Cheryl Norton, 10-16-12, 10:39:26-10:41:23).

III. ARGUMENT

KAWC's proposal must be an appropriate and reasonable solution to Owenton's water treatment problem. See KRS 278.020; Kentucky Utilities Co. v. Public Service Commission, 252 S.W.2d 885 (Ky., 1952). Given KAWC's knowledge of the problems with the Owenton system at the time of its acquisition and its failure to mention KRS II as a treatment option at the time it was being approved by the Commission, it would be within the discretion of the Commission to relieve the ratepayers of the burden of paying for this proposal. (Hearing Testimony of Linda Bridwell, 09-16-12, 14:51:52-14:51:20, 14:53:10-14:53:27; KAWC Response to Attorney General's Supplemental Request for Information No. 6).

If the Commission approves the proposed facilities and requires the ratepayers to pay for it, in order to meet the reasonability requirement under the circumstances of this case certain meaningful conditions would be necessary. First, the Central Division customers should not be required to pay for this proposal. KRS II was constructed for the Central Division customers. The proposal does not benefit the Central Division and may ultimately harm it by reducing the amount of water available to it in the event of a drought and expediting the need for KAWC to expand its treatment capacity. (KAWC

Response to Lexington-Fayette Urban County Government Supplemental Request for Information No. 3).

If the Central Division is required to pay for the proposal, it is penalized for KAWC's lack of diligence in addressing this treatment problem. Moreover, requiring the Central Division to pay for the proposal opens the door for KAWC to use KRS II (and the Central Division Customers) to pay for any KAWC expansion or as a supplementary source of water for other water jurisdictions. (Hearing Testimony of Cheryl Norton, 10-16-12, 10:39:26-10:41:23). It is not reasonable to require the Central Division customers to pay for this.

Second, KAWC should be required to obtain Commission approval prior to using any more of the Central Divisions' water supply for other purposes. KAWC has had discussions with other water jurisdictions about the possibility of providing water from the Central Division. (See e.g., KAWC Response to Hearing Request for Data No. 10). KAWC is not willing to provide its customers with any assurances that the KRS II facility will not be used as a platform for further expansion beyond its existing service area. (Hearing Testimony of Cheryl Norton, 10-16-12, 10:39:26-53, 10:41:14-10:41:23). In order to make sure the available supply of water to existing customers is not further diminished, KAWC should be required to seek formal approval from the Commission prior to entering into any arrangement under which KAWC would provide another jurisdiction with water.

IV. CONCLUSION

The Lexington-Fayette Urban County Government respectfully requests that if the Commission grants this application that it also place meaningful conditions on the proposal and KAWC in order to protect the Central Division and its ratepayers from bearing the cost of the proposed facilities and the risk of losing additional water supply.

Respectfully submitted,

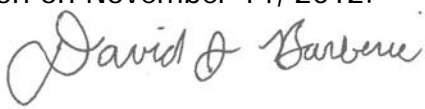
LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT
Department of Law
200 East Main Street
Lexington, Kentucky 40507
(859) 258-3500

BY: 

David J. Barberie
dbarberi@lexingtonky.gov
Managing Attorney
Jacob Walbourn
jwalbourn@lexingtonky.gov
Attorney

NOTICE AND CERTIFICATION

In accordance with Ordering Paragraph No. 10 of the Commission's March 20, 2012 Order, this is to certify that Lexington-Fayette Urban County Government's November 14, 2012 electronic filing is a true and accurate copy of the documents being filed in paper medium; that the electronic filing has been transmitted to the Commission on November 14, 2012; that there are currently no parties that the Commission has excused from participating by electronic means in this proceeding; and that an original and one copy of the filing in paper medium are being mailed to the Commission on November 14, 2012.

BY: 

David J. Barberie