

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY-	)	CASE NO.
AMERICAN WATER COMPANY FOR	)	2012-00520
AN ADJUSTMENT OF RATES	)	

**POST-HEARING BRIEF OF COMMUNITY ACTION COUNCIL FOR 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. 4-7). CAC presented credible, unrebutted testimony in this proceeding about the affordability gap that will widen with KAWC’s requested rate increase. (Pre-Filed Testimony of Jack E. Burch, pp. 9-11).

## ARGUMENT

### **I. THE PROPOSED RATE INCREASE WILL SEVERLY IMPACT KAWC'S LOW INCOME CUSTOMERS.**

#### *17.5 Percent of KAWC Customers are Living in Poverty*

It is clear from the unrebutted testimony of Jack E. Burch that KAWC's proposed rate increase will impose serious hardship on KAWC's low-income customers and is unreasonable, given the number of persons in the service area that are living in poverty. Based on Census data and the customer information provided by KAWC, there are approximately 19,796 KAWC customers living in poverty throughout the service area. This number is 2,400 more than in 2010, at the time of the last rate case. In Fayette County alone, 18,248 customers live at the poverty level. As a percentage, 17.5 percent of KAWC's customer base of 113,032 live in poverty. (Pre-Filed Testimony of Jack E. Burch, pp. 7-8). It is significant to note that these statistics represent 100% of the Federal Poverty Guideline, a standard that is considered outdated even by the Federal officials who use it, because it does not capture the full extent of persons living in poverty. (Pre-Filed Testimony of Jack E. Burch, p. 8).

#### *The Affordability Gap will Continue to Widen with this Rate Increase*

Since 2007, KAWC customers have experienced a 71% increase in water costs. KAWC's rate cases of 2007, 2009, and 2010 resulted in increases of 13.9%, 16.7%, and 28.9% respectively. The proposed increase in this case of 17.6% will continue to widen the affordability gap as households will be forced to spend ever larger portions of their household income to pay their monthly water bills. (Pre-Filed Testimony of Jack E. Burch, p. 2). A household with a single member living at the federal poverty level with a monthly income of \$957.50 will be spending 4% of that monthly income on the water bill. (Pre-Filed Testimony of Jack E. Burch, pp. 10).

The impact of a rate increase of the magnitude proposed will be an increasingly difficult negotiation of basic needs. And water is more than a basic need; it is a survival need. At current rates, families in poverty are forced to make choices regarding which needs to satisfy. “The stress of stretching resources will continue to act as a barrier to increasing opportunity and reaching self-sufficiency.” (Pre-filed Testimony of Jack E. Burch, p. 10).

*Inadequate funding of Help to Others*

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 primarily by KAWC shareholders, and some customer donations, assists families up to 150% of the federal poverty guidelines. (Pre-Filed Testimony of Jack E. Burch, p, 8). CAC has been able to assist fewer customers each year since 2010. Customers helped decreased by 189 from 2011 to 2012. (Pre-Filed Testimony of Jack E. Burch, p. 12). KAWC cross examined Mr. Burch as to why fewer persons were helped in 2012 than 2011, when there was no rate increase during that time. Mr. Burch stated that it takes a while to get the impact, and that “if your household income is less than basic survival needs, you have an interplay with a lot of essential household needs.” (Video Transcript, June 5, 2013, 17:46:38-17:48:07). Along with the decrease in the number of customers helped each year since 2010, the average amount of H2O necessary assistance per customer has increased by 41% since 2008. (Pre-Filed Testimony of Jack E. Burch, p. 12).

KAWC has contributed to H2O at the same rate of \$60,000 per year from 2010-2013. (Pre-Filed Testimony of Jack E. Burch, p. 9). Cheryl Norton, KAWC’s president, did not know how the shareholder contributions to H2O compared to KAWC’s earnings during this time. While shareholder contributions to H2O increased by 0% between 2010 and 2012, the *Lexington Herald Leader* reported the parent company American Water Works’ earnings during that period

increased by 14%, on a compounded basis, according to its CEO. (Video Transcript, June 4, 2013, 11:42:35-11:44:36 and CAC Exhibit 1).

Mr. Burch stated that KAWC's contribution to H2O is "well below the amount necessary to operate an effective program," and H2O is funded at about 4.6 percent of actual need. (Pre-Filed Testimony of Jack E. Burch, p. 12). Customer response to H2O through its water bill is largely insignificant given the need, with a total of \$1,018 having been contributed in 2012 and \$49 contributed through March 2013. (Pre-Filed Testimony of Jack E. Burch, pp. 8-9).

*The Impact of the Rate Increase on Low-Income Customers is Not a Priority for KAWC*

Cheryl Norton, President of KAWC, did not know what percentage of her company's customer base lives at the poverty level. (Video Transcript, June 4, 2013, 11:37:42-11:37:54). Paul Herbert, who sponsored the testimony on KAWC's rate design, had no independent knowledge of the customer base living in poverty, and stated that he only knew how many KAWC customers live in poverty from the other testimony he heard. (Video Transcript, June 4, 2013, 15:08:12-15:08:43). In response to being asked if he performed an analysis on how the rate design he was sponsoring would affect low-income persons, Mr. Herbert stated: "We would have done a bill comparison of the affect of the effect of the increase at various levels of usage." (Video Transcript, June 4, 2013, 15:07:48-15:08:12). CAC would submit that this statement is very telling about the interest by KAWC in the impact of its rate design on its most vulnerable customers. Low-income customers will also compare their new water bills to their old ones.

The Order in Case No. 2010-00036 ordered KAWC to develop and implement a system to accurately record and determine the number of customers making payments after the due date, the number of service terminations for nonpayment for each customer account and company wide. In that case, the Commission stated: "If the Commission is to properly review and assess affordability of Kentucky American rates, we must have accurate and reliable information

regarding customer payment.” (CAC, Hearing Exhibit 2, Case No. 2012-00036, p. 74). Notwithstanding that KAWC now states that it has such a system, Linda Bridwell, Manager of Rates and Regulations, testified that KAWC had done no calculations on the impact of this proposed residential rate increase on shutoffs and arrearages. (KAWC Response to CAC First Request for Information, Q. 8 and Video Transcript, June 5, 2013, 11:24:17-11:24:39). Collecting information on late payments, arrearages, and shutoffs is meaningless unless that information is used to evaluate the impact of a proposed rate increase on affordability.

Linda Bridwell cited the steps taken by KAWC to reduce its shutoffs and arrearages, including raising the threshold amount for arrearages and introducing e-billing. (Video Transcript, June 5, 2013, 11:25:39-11:26:40, and KAWC Response to CAC Information Request, Q. 9). Mr. Burch testified that raising the threshold to \$75 is not necessarily good for low-income persons. (Video Transcript, June 5, 2013, 17:47:49-17:47:58). The result can be that they can owe \$75 instead of \$25, and get shut off. Ms. Bridwell acknowledged that raising the threshold will not help people who cannot afford their bills. (Video Transcript, June 5, 2013, 11:25:39-11:26:40). Likewise, low-income persons who have no computer or those who have to choose between paying their water bill and medicine will not likely be helped by e-billing. (Video Transcript, June 5, 2013, 11:32:06-11:33:09).

On cross examination of Mr. Burch, KAWC introduced Exhibit 5 which listed median incomes per household size in Kentucky, including a four (4) person family at \$66,409. Mr. Burch showed the irrelevancy of this chart to the low-income families in CAC’s data base, by pointing out that the median income for a four (4) person family at the poverty level is \$23,550. (Video Transcript, June 5, 2013, 18:09:45-18:10:21). Mr. Burch also testified that the average household size difference between low-income and non low-income is irrelevant (2.51 to 2.38) (Video Transcript, June 5, 2013, 17:59:04-17:59:30).

## **II. KAWC FAILED TO COMPLY WITH THE ORDER IN THE 2010 RATE CASE BY FAILING TO CONSIDER RATE DESIGN OPTIONS TO ENHANCE AFFORDABILITY OF WATER.**

On page 74-75 of the Order in Case No. 2010-00036, the Commission stated:

CAC urges the Commission to restructure Kentucky-American's proposed rate design to create a graduated, tiered rate structure. It asserts that an inclining block structure that provides a minimum quantity of water at an inexpensive level and increasing rates based upon increased usage would benefit all customers. Such a rate structure, CAC argues, would make a minimum quantity of water affordable to low income customers and would promote conservation.

(CAC Exhibit 2). The Commission found in that case that "CAC's proposal should be further studied and additional customer data gathered to permit a thorough assessment of the proposal's potential effects." (CAC Exhibit 2, p. 75). Notwithstanding the Commission's order in the last case, Linda Bridwell agreed that KAWC did not study the inclining block rate structure. (Video Transcript, June 5, 2013, 11:36:31-11:36:53). Paul Herbert who developed and filed testimony on KAWC's rate design also stated that the company did not examine tiered rates and that no data was provided him for that purpose. (Video Transcript, June 4, 2013, 15:10:42-15:11:40).

When asked how his rate design allows a customer on a fixed income constantly faced with choices on spending for food, medicine, electricity, etc. control her costs, Mr. Herbert stated that the company did not differentiate between low-income and regular income customers. His solution to the low-income problem is a low-income discount on the customer charge, which would require legislation. (Video Transcript, June 4, 2013, 15:25:26-15:16:52). And in the unlikely event that legislation would be passed, he had no Plan B. (Video Transcript, June 4, 2013, 15:17:47-15:18:09).

In addition, the Attorney General's and LFUCG's rate design expert, Brian Kalcic, did not examine tiered rates. He also did not consult with any policy persons or persons in LFUCG's

social services department or its mayor's office on the effects of his proposed rate design on low-income persons in the service area. (Video Transcript, June 5, 2013, 16:56:30-16:57:14). In addition, he had no independent information about the level of poverty in the service area. (Video Transcript, June 5, 2013, 16:58:28-16:58:52). In complete agreement with KAWC's cost of service study, the Attorney General and LFUCG sponsored a rate design that recommended a "10% increase to all GMS service charges, which represents the maximum service charge increase that may be implemented without causing a decrease in one or more consumption charges." (Direct Testimony of Brian Kalcic, pp. 4, 11). Mr. Kalcic admitted that the benefits of having more of the revenue recovered in usage than in fixed costs (water costing more as more is used) gives greater control over the final bill. However, he supported a greater increase in the service charges than in the consumption charges. (Testimony of Brian Kalcic, p. 10). This gives low-income persons no control over their water bill. The Attorney General and LFUCG have abandoned the most vulnerable in the KAWC service area.

**III. KAWC'S RATE INCREASE SHOULD BE DENIED FOR THE REASON THAT KAWC FAILED TO WORK IN A COLLABORATIVE PROCESS TO IDENTIFY AND STUDY ALL POTENTIAL REGULATORY AND LEGISLATIVE SOLUTIONS TO ENHANCE AND IMPROVE AFFORDABILITY OF WATER AS ORDERED IN THE 2010 RATE CASE.**

In the 2010 rate case, the Commission ordered KAWC to initiate a collaborative effort "to identify and study potential regulatory and legislative solutions to enhance and improve the affordability of water service for low-income customers." (Order, Case No. 2010-00036, p. 87). The Commission found that the collaborative "should not be limited to examining potential rate design options to enhance affordability of water service, but should consider all potential regulatory and legislative solutions to this perplexing issue." (CAC Exhibit 2, Order, Case No. 2010-00036, p. 75).

At the first “collaborative” meeting on February 9, 2011, less than two months after the Order in Case No. 2010-00036 was issued, Cheryl Norton was present and KAWC announced that the solution to affordability was legislation that would allow for a low-income discount. (Video Transcript, June 4, 2013, 11:53:12-11:53:25). KAWC announced this solution notwithstanding that no other solutions had been examined. Cheryl Norton calls the legislation “the best and most direct way to provide assistance to low-income customers.” (Rebuttal testimony of Cheryl Norton, p. 2). The legislative solution was in fact the only solution to the problem of affordability that KAWC was willing to entertain.

Meetings were held in March, September, and December 2011. (CAC Response to KAWC Data Requests, Q. 1). Ms. Norton acknowledged that KAWC’s lobbyist, John-Mark Hack, was supposed to “drive” or “facilitate” the lead on legislation. (Video Transcript, June 4, 2013, 11:55:46-11:57:20).

After the December, 2011 meeting, there was not another meeting of the “collaborative” and minimal communications for over a year. The final meeting, on December 18, 2012, was called by KAWC and preceded the filing of this rate case by just ten days. (Video Transcript, June 4, 2013, 12:01:20-12:01:35). At this meeting, right before the rate case was filed, KAWC passed out the AWWA Manual on low-income affordability. (Video Transcript, June 4, 2013, 12:01:35-12:01:40).

Cheryl Norton acknowledged that she was aware that the Attorney General’s representatives and CAC wanted to explore and asked for other affordability options and that was apparent in the meetings she attended. (Video Transcript, June 4, 2013, 12:02:34-12:02:52).

Mr. Burch testified that there were several meetings, but the only two meetings of the “collaborative” of any significance were the first and last. He testified that CAC went into the first meeting with a presumption that there was a process that was going to be followed pursuant



to the Commission's order. He stated that the Commission had expressed an interest in CAC's proposal for inclining block rates, but the "company made it very clear that its interest was in legislation." (Video Transcript, June 5, 2012, 17:44:01- 17:44:33). He further stated that CAC was willing to work on all possibilities, including legislation, but that never occurred. He stated that at the December, 2012 meeting, the discussion centered around a draft of legislation for which there was still no consensus among the parties regarding the language. He concluded that the group never got around to doing what the Commission asked that it do. (Video Transcript, June 5, 2013, 17:44:34-17:45:13).

Mr. Burch described the "collaborative" this way: "This was not a collaborative effort. This was a series of meetings held by the company." (Video Transcript, June 5, 2012, 17:58:25-17:58:30) "KAWC promoted legislation as the option it wanted to pursue. It did not follow the Commission's Order. It did not follow the interests of the other parties." (Video Transcript, June 5, 2013, 17:57:18, 17:57:29).

It is clear from Mr. Burch's testimony that CAC wanted to explore other options for affordability. However, CAC was generally in support of low income discount legislation, and Cheryl Norton acknowledged that. She stated that Mr. Burch made it clear that he did not want to take the legislation to a sponsor, but if it were introduced, he would do what he could to support it. (Video Transcript, June 4, 2013, 12:02:54- 12:03:28).

Notwithstanding the acknowledgement of Cheryl Norton that John-Mark Hack was to take the lead on getting a sponsor for the legislation, KAWC attempted to put the blame on Mr. Burch by cross examining him regarding CAC's ability to involve itself in lobbying. Mr. Burch explained that CAC is funded with 70% federal money, those grants containing strict prohibitions on spending the funds to influence legislation. The other 30% funding is made of state, local, and private dollars, and the bulk of it also has restrictions. The amount of

unrestricted funding that can be used for lobbying is very small. Further, Mr. Burch stated that CAC would have had influence only with the legislators in CAC's service area. (Video Transcript, June 5, 2013, 17:59:50-17:51:09). In response to questions as to why Community Action Kentucky (CAK) did not attempt to get the legislation introduced, Mr. Burch stated that Robert Jones, head of CAK, does lobby for legislation when a majority of the Board of Directors adopt a resolution for the 23 agencies. (Video Transcript, June 5, 2013, 17:48:34-17:49:36). While the legislation may have had some benefit to customers in other areas where there may be some other investor owned water utilities, Mr. Burch stated that there was "no interest" from the other community action agencies. (Video Transcript, June 5, 2013, 17:51:10-17:51:31). Mr. Jones was not willing to promote legislation for an individual agency. (Video Transcript, June 5, 2013, 17:51:03-17:51:08, 31-17:52:07).

Mr. Burch stated: "Kentucky American drafted legislation, presented it to the other parties, sought to get an agreement amongst the parties on the language, and continued to insist that Community Action Council had to carry the load in getting it passed." (Video Transcript, June 5, 2012, 17:57:46-17:59:00).

#### **IV. KAWC'S RATE INCREASE SHOULD BE DENIED UNTIL IT ADDRESSES THE AFFORDABILITY ISSUE.**

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. A graduated or tiered rate structure or inclining block rates, which provides an initial amount of low cost water and then increases in cost as consumption increases would benefit customers, especially those of low-income, by giving them some control over their water costs. (Pre-Filed Testimony of Jack E. Burch, p.13). CAC proposed this during the last rate case and it would have helped low-income persons and promoted conservation, thereby reducing the amount of water going into the LFUCG sanitary sewer systems. These are valid reasons for examining

an inclining block rate, as the Commission ordered in the 2010 case. However, KAWC did not consider an inclining block rate in developing its rate design, and an inclining block rate was not considered in the collaborative.

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. While KAWC denies that it is negotiating with other cities to sell water, Linda Bridwell stated that KAWC's door is open to "regional opportunities." (Video Transcript, June 4, 2013, 12:03:32-12:04:05 and June 5, 2013, 10:25:17-10:26:05). Further it is clear from the testimony of Linda Bridwell that other communities are interested. (Video Transcript, June 5, 2013, 10:19:11-10:25:17).

**V. KAWC SHOULD BE ORDERED TO FUND A TASK FORCE TO STUDY THE AFFORDABILITY ISSUE.**

CAC urges the Commission to order that KAWC fund a study for solutions to the water affordability problem in its service area. CAC suggests that this study could be made through a task force headed by the Center on Poverty Research at the University of Kentucky. This study could also include economists at the University of Kentucky's Gatton School of Business and Economics to examine tiered rates and environmental scientists to examine usage and conservation.

**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. A minimum amount of water, however, is life sustaining, and low-income customers have no options for a better deal. CAC urges that the requested rate increase should be denied. CAC also requests that the Commission take a pro-active stand in requiring KAWC to fund a study on

water affordability and further, provide for 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 July 8, 2013 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 July 8, 2013, 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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A handwritten signature in blue ink, appearing to read "David G. Barberi".

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