

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**IN THE MATTER OF:** )  
 )  
**THE VERIFIED JOINT APPLICATION OF** )  
**EASTERN ROCKCASTLE WATER ASSOCIATION** ) **CASE NO. 2017-00383**  
**AND KENTUCKY-AMERICAN WATER COMPANY** )  
**FOR THE TRANSFER OF CONTROL AND ASSETS** )

**JOINT APPLICANTS’ RESPONSE TO INTERVENORS’**  
**MOTION TO ADMIT DOCUMENTS INTO EVIDENCE**  
**AND MOTION FOR BRIEFING SCHEDULE**

Kentucky-American Water Company (“KAW”) and Eastern Rockcastle Water Association (“ERWA”) (collectively, the “Joint Applicants”) hereby submit their joint response to the Intervenor’s December 8, 2017 Statement Regarding Hearing, Motion to Admit Documents into Evidence, and Motion for Briefing Schedule (“Intervenor’s Motions”). As set forth below, the Commission should deny Intervenor’s Motions.

As an initial matter, the Intervenor’s December 8, 2017 filing is dispositive as to whether a hearing should be held in this matter. The Commission’s October 17, 2017, procedural schedule required the parties to “request” a formal hearing if desired or file a “statement that this case may be submitted based on the existing record” no later than December 8, 2017. In accordance with that directive, Joint Applicants filed a statement indicating the case may be decided on the existing record. Although the Intervenor filed what they refer to as a “statement” and related motions, they did *not* request a hearing. The Commission’s October 17, 2017, Order is clear. If a party wanted a hearing, they were required to request one. No such request has been made, so no hearing should occur. Of course, this is the correct result in light of the expense required of a hearing and the clear result that should be reached in this case.

Rather than indicate a hearing is not necessary, the Intervenors attempt to parlay the opportunity to request a hearing into an attempt to introduce extraneous evidence into the record. Interestingly, the Intervenors do not state that the documents they seek to have admitted into evidence are even relevant. They only say that such documents “may” be relevant.<sup>1</sup> The documents attached to Intervenors’ Motions appear to be reflective of ERWA’s unsuccessful historical effort to obtain funding for certain capital improvements to its system. They show that such funding was not obtained<sup>2</sup> for a project that was to have been started and completed by August 1, 2017.<sup>3</sup> They further show that the project in question ranks almost last (fourth out of five projects) for projects in Rockcastle County according to what purports to be the Cumberland Valley Area Development District’s project rankings.

Thus, if anything, the documents show that KAW’s financial ability to invest in capital projects is exactly why the change of control should be approved. KAW has recognized the capital needs of the ERWA system in its discovery responses<sup>4</sup> and, of course, ERWA is keenly aware of those needs. So, while KAW and ERWA are opposed to the introduction of extraneous documents into the record because of the unorthodox manner in which they have been proposed, the fact of the matter is that they are yet another reason why the proposed transfer should be approved and is in the public interest.

For the same reasons that a hearing should not be held -- conservation of time and resources -- briefing should not occur either. The legal issue before the Commission is whether KAW has “financial, technical, and managerial abilities to provide reasonable service”<sup>5</sup> and

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<sup>1</sup> Intervenors’ Motions, p. 1.

<sup>2</sup> See page 1 of 8 of the “Project Profile” indicating “not funded.”

<sup>3</sup> See page 2 of 8 of the “Project Profile” showing an estimated completion date of August 1, 2017.

<sup>4</sup> See Item No. 12 of KAW’s November 10, 2017 Responses to Intervenors’ First Request for Information.

<sup>5</sup> KRS 278.020(6)

whether the proposed transaction is “consistent with the public interest.”<sup>6</sup> It appears that the Intervenor are only disputing the “public interest” requirement, as their Motion for Leave to Intervene refers only to it.<sup>7</sup> Thus, presumably, the Intervenor want to make some sort of “public interest” argument in a brief. But the plain fact is that the September 22, 2017, Joint Application, its supporting materials, and the discovery responses Joint Applicants have filed have provided the Commission with a complete record upon which to reach the correct decision without any further filings. The record is already clear that the “public interest” requirement has been satisfied.<sup>8</sup> KAW and ERWA’s leadership reached an arms-length agreement for this transaction and the existing record already demonstrates that a transparent review of that agreement has occurred in a way that should provide confidence for all concerned. Moreover, a vast majority of ERWA customers voted in favor of this transaction (the vote was 231-41 in favor of the transaction).<sup>9</sup> While the two individual intervenors in this case may disagree with the outcome of that vote, the vast majority of their fellow customers have spoken by ballot. And their ballots are perhaps the best indicator of all on the issue of whether this transaction in the “public interest.”

When the Intervenor moved to intervene, they committed to assisting the Commission “without unduly complicating or disrupting the proceedings.”<sup>10</sup> Since then, they have: (1) required an adjustment to the procedural schedule;<sup>11</sup> (2) substantially increased the amount of discovery; (3) chosen not to follow the Commission’s directive to either request a hearing or state that the case may be submitted on the record by seeking the admission of documents “in

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<sup>6</sup> KRS 278.020(7).

<sup>7</sup> Intervenor’s October 23, 2017 Motion for Leave to Intervene, p. 2.

<sup>8</sup> See Item No. 16 of Joint Applicants’ November 6, 2017 Responses to Commission Staff’s First Request for Information.

<sup>9</sup> See Item 6 of ERWA’s December 4, 2017 responses to Intervenor’s Information Request, p. 2 of 7.

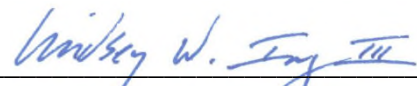
<sup>10</sup> *Id.*

<sup>11</sup> See the Intervenor’s October 26, 2017 Motion for Leave to File Data Requests Out of Time.

lieu of” a hearing; and (4) requested unnecessary briefing. The time has come to close the record and decide this straightforward case without any further filings. Of course, should the Commission decide otherwise and allow briefing, Joint Applicants will have no choice but to consider submitting their own brief to ensure that any brief the Intervenors submit does not distort the record. Thus, if the Commission allows briefing, which it should not, then Joint Applicants agree that any party should be permitted to submit briefs on the same date.

WHEREFORE, Joint Applicants respectfully request the Commission deny the Intervenors’ Motions and move forward with a decision without a hearing or briefing.

Lindsey W. Ingram III  
[L.Ingram@skofirm.com](mailto:L.Ingram@skofirm.com)  
Monica H. Braun  
[Monica.braun@skofirm.com](mailto:Monica.braun@skofirm.com)  
STOLL KEENON OGDEN PLLC  
300 West Vine Street, Suite 2100  
Lexington, Kentucky 40507-1801  
Telephone: (859) 231-3000  
Fax: (859) 259-3503

BY:   
*Counsel for Kentucky-American Water Company*

William Leger  
[legerw1@legerlaw.com](mailto:legerw1@legerlaw.com)  
Attorney at Law  
P.O. Box 1250  
Mount Vernon, KY 40456  
Telephone: (606) 256-2728  
Fax: (606) 856-2585

BY: /s/ William Leger  
*Counsel for Eastern Rockcastle Water Association*

**CERTIFICATE**

This certifies that the electronic filing of this document 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 December 13, 2017; that an original and six paper copies of the filing will be delivered to the Commission within two business days of the electronic filing; and that no party has been excused from participation by electronic means.

STOLL KEENON OGDEN PLLC

By   
*Counsel for Kentucky-American Water Company*