

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

IN THE MATTER OF:

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

**REPLY BY
JAMES E. BALLINGER AND THOMAS P. DUPREE, JR.**

Intervenors James E. Ballinger and Thomas P. Dupree, Jr. (collectively “Intervenors”), by counsel, respectfully submit the following Reply in support of their Motion to Admit Documents into Evidence and Motion for Briefing Schedule:

On December 8, 2017, the Intervenors filed motions requesting that specific documents be admitted into the record and requesting that the Commission enter a briefing schedule. On December 13, 2017, Kentucky-American Water Company and Eastern Rockcastle Water Association (collectively, the “Joint Applicants”) jointly filed a Response to the motions, in which they object to the Intervenors’ requests.

Although the Joint Applicants state that they oppose written briefs to be filed in the interests of “conservation of time and resources,” it is clear that the Joint Applicants are merely seeking to suppress voices of opposition by any means necessary. They do not want anyone arguing why the facts in the record indicate that the Joint Applicants have failed to meet their burden in establishing the standards set forth in subsections (6) and (7) of KRS 278.020. This type of bullying should not be permitted. In fact, it would be a violation of due process not to allow the Intervenors an opportunity to be heard in this matter. See Hilltop Basic Resources, Inc.

v. Cnty. of Boone, 180 S.W.3d 464, 469 (Ky. 2005) (“The fundamental requirement of procedural due process is simply that all affected parties be given ‘the opportunity to be heard at a meaningful time and in a meaningful manner.’ ”) (quoting Mathews v. Eldridge, 424 U.S. 319, 333 (1976)). A written brief will allow the opportunity for the Intervenors to be heard in a meaningful way.

Ironically, the Joint Applicants have used the Response to argue the merits of their case, while nevertheless advocating that written briefs should not be filed. This is simply not appropriate, and the Intervenors will reserve substantive arguments for their brief.¹

The Joint Applicants oppose the introduction into the record of certain public records submitted by the Intervenors, suggesting that it is an “unorthodox manner” of introduction. The Intervenors disagree as to such characterization because these records could have been the subject of information requests issued to the Intervenors, if the statutory deadlines would have allowed such discovery. Moreover, these documents would be admitted in any hearing in this matter² and admitting them outside the context of a hearing may eliminate the need for a hearing. And along those lines, it is particularly surprising that the Joint Applicants are opposed to introduction of these public records in a manner that is designed as a cost-savings measure because the Joint Applicants fervently oppose an evidentiary hearing to avoid costs.

The record is not yet closed, as acknowledged by the Joint Applicants. See Response at 4 (“The time has come to close the record”) Because these public records could have otherwise been introduced into the record through information requests or hearing, they should be admitted into the record.

¹For the same reason, the Intervenors in their written brief will explain why the information contained in the public records attached to the Intervenors’ December 8 filing is relevant, contrary to the Joint Applicants’ suggestion.

² As mentioned in the Intervenors’ December 8 filing, courts and agencies commonly accept public records into a case record. See Intervenors’ Motions at 2 n.2.

The Joint Applicants want the best of both worlds. They want to argue the merits of the case in the Response, but not permit the Intervenors to present their argument. They want to avoid costs, but are unwilling to accept a cost-avoidance way of introducing documents into the record of the case.

The Joint Applicants have had an opportunity to present information and argument in their Application, data responses, and Responses to the Intervenors' motions. The Intervenors' simply request an opportunity for similar treatment to introduce documents into the record and to file written briefs. The Intervenors' Motions should be granted.

Respectfully submitted



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CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that the December 13, 2017, electronic filing of this Reply is a true and accurate copy of the same document being filed in paper medium; that the electronic filing will be transmitted to the Commission on December 13, 2017; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original paper medium of the Reply and six copies will be delivered to the Commission within two business days.



Attorney for Ballinger and Dupree