

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY-)
AMERICAN WATER COMPANY FOR AN) CASE NO. 2018-00358
ADJUSTMENT OF RATES)

**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT’S
MOTION TO STRIKE**

Pursuant to 807 KAR 5:001, Section 11(4), Lexington-Fayette Urban County Government (“LFUCG”) respectfully moves the Kentucky Public Service Commission (“Commission”) to strike Kentucky-American Water Company’s (“KAWC”) Supplemental Response filed on June 14, 2019, related to Item 5 of LFUCG’s Post-Hearing Data Request and the related arguments. In support of its motion, LFUCG states as follows:

Administrative Regulation 807 KAR 5:001, Section 11(4) states: “Unless so ordered by the commission, the commission shall not receive in evidence or consider as a part of the record a book, paper, or other document for consideration in connection with the proceeding after the close of the testimony.” On multiple occasions, the Commission has confirmed that this regulation means what it says: that introduction into the record of materials after the close of testimony shall not be considered.

In *Jessamine-South Elkhorn Water District*, the Commission granted intervenor’s motion to strike related to the applicant’s attempted introduction of materials in its post-hearing brief.¹ The Commission explained: “We found that JSEWD’s introduction of such materials through

¹ See *Jessamine-S. Elkhorn Water Dist.*, Case No. 2012-00470 at 4-5 (Ky. PSC Jan. 3, 2014).

its brief after the close of testimony was contrary to 807 KAR 5:001, Section 11(4), and that permitting JSEWD to submit such material through its brief deprived the Intervenors of their right to due process.” The Commission reaffirmed its decision in a subsequent order addressing an application for rehearing and explained the purpose of that regulation:

The intent of Section 11(4) is twofold: (1) to impose some sense of order and closure on the evidentiary phase of Commission proceedings and (2) to ensure that the parties carefully and thoroughly prepare and present their case in a timely manner. It prevents parties from presenting their evidence in a piecemeal fashion or attempting to endlessly drag out the evidentiary phase to gain the last word. At some point the record must close. To permit a party in a contested case to present factual evidence after the closing of the record, and without Commission approval, would encourage parties to needlessly prolong Commission proceedings in an effort to achieve an unfair advantage by late evidentiary submissions that an opposing party has no opportunity to confront, cross-examine or rebut. Such action would also reward the party that fails to thoroughly prepare its case by allowing it a second bite at the apple.²

The Commission made similar rulings in at least two other cases. In *Water Service Corporation of Kentucky*, the Commission struck certain materials that the applicant sought to introduce, finding that “the exhibits are new evidence and the Intervenors did not have the opportunity to question the information presented in the exhibits.”³ In *Barker v. East Kentucky Power Cooperative*, the Commission determined information that was several years old and that was attempted to be introduced by the Complainants “could have been presented at the hearing as part of Complainants’ direct case or through cross-examination of EKPC. However, the

² *Id.* at 6.

³ See *Water Serv. Corp. of Kentucky*, Case No. 2013-00237 at 7 (Ky. PSC July 11, 2014).

information was not presented for the first time until it appeared in Complainants' brief, thereby depriving EKPC of an opportunity to address the allegations."⁴

In the present case, the close of testimony was effectively May 24, 2019, which was the deadline by which KAWC was required to file its responses to post-hearing data requests. On that date, KAWC filed its responses to those requests, including a response to Item 5 of LFUCG's request that sought "copies of contracts, invoices, or other documentation *that support* charges incurred in the preparation of this case."⁵ LFUCG's request clearly sought documentation that supported the charges for rate case expense. But KAWC provided a single-page invoice per month that was inadequate (based on Commission precedent)⁶ to support the expenses.

After LFUCG filed its post-hearing brief and in response thereto, KAWC filed on June 14, 2019, a detailed itemization of expenses in hopes of alleviating the concerns raised by LFUCG in its brief. This late submission gives KAWC "an unfair advantage" because "an opposing party has no opportunity to confront" that information.⁷ Based on 807 KAR 5:001, Section 11(4), and prior Commission precedent, the Commission should accordingly strike KAWC's supplemental filing dated June 14, 2019, from the record and not consider it on the merits of this case.

⁴ *Barker v. E. Kentucky Power Coop.*, Case No. 2013-00291 at 8 (Ky. PSC July 6, 2015).

⁵ LFUCG Post-Hearing Data Request, Item 5(b) (filed May 16, 2019)(emphasis added).

⁶ *Big Rivers Elec. Coop.*, Case No. 2011-00036 at 6 (Jan. 29, 2013)("rate case expenses must be supported by unredacted copies of invoices").

⁷ *See Jessamine-S. Elkhorn Water Dist.*, Case No. 2012-00470 at 5 (Ky. PSC Jan. 3, 2014).

Respectfully submitted,



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CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that the June 18, 2019, electronic filing of this document 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 June 18, 2019; 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 Notice of Filing will be delivered to the Commission within two business days.



Counsel for LFUCG