

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
RESPONSE TO THE ATTORNEY GENERAL’S PETITION FOR REHEARING**

Pursuant to 807 KAR 5:001, Section 5, Lexington-Fayette Urban County Government (“LFUCG”) respectfully submits the following Response brief to the Attorney General’s Petition for Rehearing.

On July 22, 2019, the Attorney General filed a Petition for Rehearing related to certain issues arising from the Commission’s June 27, 2019, final order (“Order”) in this matter. LFUCG generally agrees with the arguments presented in the Attorney General’s Petition. LFUCG submits this Response to address two issues identified in the Petition for Rehearing on which LFUCG presented arguments in its Post-Hearing Brief.

First, LFUCG agrees with the Attorney General’s position that the Commission mischaracterized the testimony of Richard Baudino and arguments presented by LFUCG on KAWC’s proposed Qualified Infrastructure Program. Contrary to the statement by the Commission that LFUCG “declined to address the reasonableness and prudence of the proposed QIP,” the leading argument in LFUCG’s Post-Hearing Brief concludes with the statement that “KAWC has failed to meet its burden that QIP is reasonable, and therefore, the QIP proposal

must be rejected.”¹ The preceding six pages in the brief present analysis on the lack of reasonableness and prudence of KAWC’s proposed QIP. Most notably, LFUCG explained why the proposal was not reasonable because KAWC and its corporate parent were committed to funding necessary infrastructure replacement regardless of whether there was a QIP.² LFUCG illuminated why the proposal was not prudent in light of the fact that QIP is inextricably interconnected with a vague and elusive concept of “discretionary capital.”³ And LFUCG highlighted the lack of analysis by KAWC to demonstrate that QIP would improve water loss.⁴

In addition to the fact that LFUCG addressed the reasonableness and prudence of QIP, the record does not support the Commission’s findings. Although LFUCG supports the “status quo” for the methodology on how KAWC invests in infrastructure replacement,⁵ LFUCG did not ignore the fact that KAWC put itself in the position of needing infrastructure replacement on a faster pace than the next 377 years. The record clearly shows that KAWC has a long history of water loss and an equally long history of inadequately addressing increasing water loss. Over the last ten years, KAWC’s water loss has climbed from 13.7% to 20.9%.⁶ If KAWC had appropriately invested in infrastructure replacement over the years, it would not be in the position that it is in today.

Similarly, there is insufficient evidence in the record to demonstrate that there would be rate shock in the next rate case if QIP is not approved.⁷ This is particularly true considering the fact that KAWC could have been making these infrastructure replacements over the last decade while their water loss was increasing. Accordingly, on rehearing, the Commission should clarify

¹ LFUCG Post-Hearing Brief at 8.

² *Id.* at 3-5.

³ *Id.* at 5-6.

⁴ *Id.* at 6-8.

⁵ *See* Order at 81.

⁶ *See* LFUCG Post-Hearing Brief at 11.

⁷ *See* Order at 81.

that LFUCG addressed the reasonableness and prudence of the proposed QIP and determine that KAWC's proposed QIP is not supported by the record.

Second, the Attorney General aptly asserts that the Commission shifted the burden of proof on certain issues from the applicant utility (Kentucky-American Water Company) to the Intervenor (LFUCG and the Attorney General).⁸ As articulated by the Attorney General, the Commission rejected LFUCG's argument that KAWC did not support the reasonableness of the Chemical Complex by finding that there was a lack of evidence to support an adjustment denying recovery of the cost of the Chemical Complex in rates, without any finding that the Chemical Complex and associated expenses were reasonable.⁹ Specifically, the Commission found that there was "no evidentiary support in the record regarding the [LFUCG] proposed adjustment."¹⁰

The Commission's finding shifts the burden of proof away from the utility to show that the proposed expense is reasonable. Such a shift is unlawful. *See Energy Regulatory Commission v. Kentucky Power Co.*, 605 S.W.2d 46, 50 (Ky. App. 1980)(citing *Lee v. International Harvester Co.*, 373 S.W.2d 418 (Ky. 1963)("Applicants before an administrative agency have the burden of proof.") Accordingly, on rehearing, the Commission should evaluate whether KAWC has met its burden of proof on each of the issues identified by the Attorney General, and with respect to the Chemical Complex, find that KAWC has not demonstrated the reasonableness of the expense for the reasons stated in LFUCG's Post-Hearing Brief. And, as discussed above, the Commission should clarify that LFUCG addressed the reasonableness and prudence of the proposed QIP and determine that KAWC's proposed QIP is not supported by the record.

⁸ AG's Petition for Rehearing at 11-16.

⁹ *Id.* at 12.

¹⁰ Order at 51.

Respectfully submitted,



STURGILL, TURNER, BARKER & MOLONEY, PLLC
James W. Gardner
M. Todd Osterloh
333 W. Vine Street, Suite 1500
Lexington, Kentucky 40507
Telephone No.: (859) 255-8581
Facsimile No.: (859) 231-0851
jgardner@sturgillturner.com
tosterloh@sturgillturner.com

and

David J. Barberie, Managing Attorney
Department of Law
200 East Main Street
Lexington, Kentucky 40507
(859) 258-3500
dbarberi@lexingtonky.gov

*Attorneys for Lexington-Fayette Urban County
Government*

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that the July 29, 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 July 29, 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