

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY-)	
AMERICAN WATER COMPANY FOR AN)	
ADJUSTMENT OF RATES, A CERTIFICATE)	CASE NO. 2023-00191
OF PUBLIC CONVENIENCE AND NECESSITY)	
FOR INSTALLATION OF ADVANCED)	
METERING INFRASTRUCTURE, APPROVAL)	
OF REGULATORY AND ACCOUNTING)	
TREATMENTS, AND TARIFF REVISIONS)	

**THE ATTORNEY GENERAL AND LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT’S JOINT PETITION FOR REHEARING**

The Attorney General, through his Office of Rate Intervention (“Attorney General”), and Lexington-Fayette Urban County Government (“LFUCG”) submit this Joint Petition for Rehearing of the May 3, 2024 Order (“Final Order”) issued by the Kentucky Public Service Commission (“Commission”) in the above-styled matter.

ARGUMENT

KRS 278.400 limits a rehearing to new evidence not readily discoverable at the time of the original hearing, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful.¹ A Commission Order is deemed unreasonable only when, “the evidence presented leaves no room for difference of opinion among reasonable minds.”² A

¹See Case No. 2021-00214, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates* (Ky. PSC June 24, 2022), Order at 1 - 2; Case No. 2021-00365, *Electronic Application of Kenegy Corp. for a Certificate of Public Convenience and Necessity for the Construction of a High-Speed Fiber Network for Approval of the Leasing of the Network’s Excess Capacity to an Affiliate to be Engaged in the Provision of Broadband Service to Unserved and Underserved Households and Businesses of the Commonwealth* (Ky. PSC May 19, 2022), Order at 1; See also KRS 278.430.

² *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46, 50 (Ky. App. 1980).

Commission Order can only be unlawful if it violates state and federal statute or constitutional provisions.³ However, a petition for rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Commission Order.⁴

As discussed below, the Attorney General/LFUCG respectfully request the Commission to correct material errors in the Final Order pursuant to KRS 278.400.

I. The Final Order erroneously utilizes 9.07% instead of 9.007% for the rate of return, which thereby inflates the awarded revenue requirement increase by approximately \$308,339.

In the Final Order, under the Total Revenue Requirement section, the Commission used a rate of return of 9.07% to calculate Kentucky-American Water Company, Inc.’s (“Kentucky American” or the “Company”) awarded revenue requirement increase.⁵ However, based upon the Attorney General/LFUCG’s calculations the correct rate of return should be 9.007%, as indicated in the below chart.

<u>Class of Capital</u>	<u>13-Month Average Net Carrying Amount</u> (1)	<u>Ratio</u> (2)	<u>Cost Rate</u> (3)	<u>13-Month Average Weighted Cost</u> (4) = (2) x (3)	<u>Revenue Conversion Factor</u> (5)	<u>Pre-Tax Weighted Cost</u> (6) = (4) x (5)
Short-Term Debt	\$9,168,090	1.54%	5.354%	0.080%	1	0.080%
Long-Term Debt	\$273,581,929	45.87%	4.544%	2.080%	1	2.080%
Preferred Stock	\$2,245,236	0.38%	8.510%	0.030%	1.342559	0.040%
Common Equity	\$311,462,178	52.22%	9.700%	5.070%	1.342559	6.807%
	<u>\$596,457,433</u>	<u>100.00%</u>		<u>7.260%</u>		<u>9.007%</u>

³Public Service Comm’n v. Conway, 324 S.W.3d 373, 377 (Ky. 2010); Public Service Comm’n v. Jackson County Rural Elec. Coop. Corp., 50 S.W.3d 764, 766 (Ky. App. 2000); National-Southwire Aluminum Co. v. Big Rivers Elec. Corp., 785 S.W.2d 503, 510 (Ky. App. 1990).

⁴See Case No. 2021-00214, Electronic Application of Atmos Energy Corporation for an Adjustment of Rates (Ky. PSC June 24, 2022), Order at 2; Case No. 2021-00365, Electronic Application of Kenergy Corp. for a Certificate of Public Convenience and Necessity for the Construction of a High-Speed Fiber Network for Approval of the Leasing of the Network’s Excess Capacity to an Affiliate to be Engaged in the Provision of Broadband Service to Unserved and Underserved Households and Businesses of the Commonwealth (Ky. PSC May 19, 2022), Order at 2.

⁵ Case No. 2023-00191, Electronic Application of Kentucky-American Water Company for an Adjustment of Rates, A Certificate of Public Convenience and Necessity for Installation of Advanced Metering Infrastructure, Approval of Regulatory and Accounting Treatments, and Tariff Revisions (Ky. PSC May 3, 2024), Order at 40.

If the Commission uses the correct 9.007% rate of return to calculate Kentucky American's awarded revenue requirement increase, then the rate increase will be reduced by approximately \$308,339.⁶ Thus, due to a material error being made with regard to the rate of return calculation, the Attorney General/LFUCG respectfully request the Commission to correct the rate of return in the Final Order from 9.07% to 9.007%, which will reduce the awarded rate increase by \$308,339.

II. It is unclear whether Kentucky American's rate increase in the Final Order was properly calculated utilizing the Company's revised requested revenue requirement increase of \$25,563,294, or erroneously calculated based upon the original requested revenue requirement increase of \$26,051,999.

Kentucky American filed its application on June 30, 2023, and requested a \$26,051,990 revenue requirement increase.⁷ As discussed in Kentucky American's rebuttal testimony, base period update, the public hearing, and post-hearing brief, the Company revised not only its forecasted capital structure, but also revised its requested rate increase downward to \$25,563,294, partially in response to the Attorney General's discovery.⁸ In the Final Order, the Commission approved and utilized the Company's revised capital structure,⁹ and even though the Commission noted the Company's reduced, revised rate increase request, the higher, original requested rate increase was utilized to determine the awarded revenue requirement increase in the Final Order, Appendix A.¹⁰ Due to it being unclear whether the Commission incorporated the updated \$503,644 reduction in rate increase in Appendix A, the Attorney General/LFUCG request clarification of

⁶ $9.007\% \times \$489,426,491 = \$44,082,644$. $9.07\% \times \$489,426,491 = \$44,390,983$. The difference is \$308,339.

⁷ Application at 2 – 3.

⁸ Kentucky American's Base Period Update, Summary of Forecast Year Revisions filed November 2023, at unnumbered page 1; Rebuttal Testimony of Jeffrey Newcomb ("Newcomb Rebuttal") at 2; Video Transcript of Evidence ("VTE") for the December 11, 2023 Hearing at 14:36:50 – 14:37:02; Kentucky American's Post-Hearing Brief at 5.

⁹ Case No. 2023-00191, *Electronic Application of Kentucky-American Water Company for an Adjustment of Rates, A Certificate of Public Convenience and Necessity for Installation of Advanced Metering Infrastructure, Approval of Regulatory and Accounting Treatments, and Tariff Revisions* (Ky. PSC May 3, 2024), Order at 28.

¹⁰ *Id.* at Appendix A.

the same. As further discussed below, if the Commission did not incorporate the \$503,644 reduction in Appendix A then it constitutes a material error and should be corrected.

As aforementioned, Kentucky American repeatedly asserted that it was reducing the requested rate increase by \$503,644 in the Company's rebuttal testimony, base period update, the public hearing, and post-hearing brief.¹¹ In Mr. Jeffrey Newcomb's rebuttal testimony he asserted that the Company's updated "proposed revenue requirement, equal to the cost of providing service, is approximately \$141.8 million for the 12 months ending January 31, 2025, and the Company's revenue deficiency is approximately \$25.6 million, which is an approximate 22 percent deficiency, as updated in this filing."¹² Mr. Newcomb further stated that the updated proposed revenue requirement and revenue deficiency reflected the following: 1) updated rate of return of 7.80% instead of the 7.87% as originally filed;¹³ 2) updated Board of Directors Fees of \$25,000, down from the originally filed \$99,023;¹⁴ 3) updated utility regulatory assessment fee;¹⁵ 4) removal of \$9,348 for gifts/promotions items and membership dues;¹⁶ and 5) increasing the customer accounting expense by \$73,359 due to the electronic payment processing fees for e-check originally being omitted.¹⁷ Mr. Newcomb asserted that a summary of the impacts from the updates were included as the cover page to the Kentucky American's base period update filed contemporaneously with the Company's rebuttal testimony.¹⁸

¹¹Kentucky American's Base Period Update, Summary of Forecast Year Revisions filed November 2023, at unnumbered page 1; Newcomb Rebuttal at 2; VTE for the December 11, 2023 Hearing at 14:36:50 – 14:37:02; Kentucky American's Post-Hearing Brief at 5.

¹² Newcomb Rebuttal at 2.

¹³ *Id.* at 3.

¹⁴ *Id.*

¹⁵ *Id.* at 3 – 4.

¹⁶ *Id.* at 4.

¹⁷ *Id.*

¹⁸ *Id.* at 3.

As Mr. Newcomb asserted in his rebuttal testimony, Kentucky American's base period update reflected the impact of these revisions and accordingly reduced Kentucky American's revenue requirement increase by \$503,644, for a revised requested revenue requirement of \$25,563,294.¹⁹ Moreover, in Kentucky American's post-hearing brief, the Company reiterated its downward adjustment to the requested revenue requirement increase by stating that, "[t]he Company's forecasted revenue requirement in this proceeding, equal to the cost of providing service, is approximately \$141.8 million for the twelve months ending January 31, 2025. This revenue requirement reflects a slight decrease from what the Company initially proposed in its Application, as explained in the Base Period Update filed on November 8, 2023. The difference between the forecasted revenue requirement and the Company's forecasted revenues at present rates equates to the Company's revenue deficiency. The Company's revenue deficiency in this proceeding, reflective of the Base Period Update, is calculated to be approximately \$25.6 million, which is an approximate 22 percent shortfall."²⁰

Thus, the Attorney General/LFUCG respectfully request that the Commission provide clarification upon whether the \$503,644 reduction was incorporated into Appendix A to set the awarded revenue requirement. If the updated reduction of \$503,644 was not reflected in Appendix A then the Attorney General/LFUCG respectfully request that this material error be corrected by recalculating Kentucky American's awarded revenue requirement increase by utilizing the Company's revised requested revenue requirement increase of \$25,563,644 instead of the original requested revenue requirement increase of \$26,051,990.

¹⁹Kentucky American's Base Period Update, Summary of Forecast Year Revisions filed November 2023, at unnumbered page 1.

²⁰ Kentucky American's Post-Hearing Brief at 5.

CONCLUSION

WHEREFORE, the Attorney General/LFUCG respectfully request that the Commission grant their Joint Petition for Rehearing as discussed herein, which will result in a downward adjustment to Kentucky American's awarded rate increase in order to set fair, just, and reasonable rates for the ratepayers.

Respectfully submitted,

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Certificate of Service and Filing

Pursuant to the Commission's Orders and in accord with all other applicable law, Counsel certifies that the foregoing electronic filing was transmitted to the Commission on May 21, 2024, and there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

This 21st day of May, 2024,



Assistant Attorney General