COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY-AMERICAN WATER COMPANY FOR AN ADJUSTMENT OF RATES, APPROVAL OF SYSTEM IMPROVEMENT PROGRAM, AND TARIFF CHANGES	)))))))	**CASE NO. 2026-00094**

Lexington-Fayette Urban County Government ("LFUCG") requests that the Kentucky Public Service Commission ("Commission") strike Question No. 3 and its accompanying attachments of Kentucky-American Water Company's ("KAWC") Post-Hearing Data Request (which was directed solely to LFUCG) pursuant to 807 KAR 5:001, Section 9(8) and Section 11(4). LFUCG contends that Question No. 3 and its attachments are "improperly introduced," irrelevant to the current proceeding, and intended for improper purposes. For the reasons that follow, KAWC respectfully requests that LFUCG's Motion to Strike be denied.

ARGUMENT

I. Question No. 3 and its Accompanying Documents Were Timely Introduced as Part of the Record in this Case.

LFUCG's reliance upon 807 KAR 5:001, Section 11(4) is misplaced because testimony had not closed when the request was made. 807 KAR 5:001, Section 11(4), upon which LFUCG relies, provides that: "[u]nless 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 with the proceeding after the close of the testimony." This regulation is inapplicable where, as

here, KAWC has Commission approval in the form of a post-hearing procedural schedule, and the record has not closed.

The Commission's decisions have varied as to what constitutes the "close of testimony." But it does not mean the close of *hearing* testimony as LFUCG contends. The Commission has repeatedly held that the close of testimony is either the date that responses to post-hearing data requests are filed, or the date that the record is closed, neither of which had occurred when KAWC issued Question No. 3. Critically, LFUCG itself has recently taken the position that the "close of testimony" occurs for purposes of Section 11(4) upon the *filing* of responses to post-hearing data requests.[1] The Commission has agreed with and applied this interpretation.[2]

In other cases, the Commission has concluded that the "close of testimony" occurs when the "record is closed."[3] Here, the Commission's October 20, 2026 Order states that the record closes on November 10, 2026, *after* the filing of post-hearing briefs. Under either interpretation of Section 11(4), testimony in this matter had not closed when KAWC issued Question No. 3. The October 20, 2026 Order expressly permits post-hearing requests for information. The Order establishing this schedule did not limit the content of the post-hearing requests. Striking the request would not only prejudice KAWC, but would also frustrate the very purpose of post-hearing

[1] *See Elec. Application of Kentucky-American Water Co. for an Adjustment of Rates*, Case No. 2018-00358, Order at 2 (Ky. PSC June 27, 2019) ("As a basis for its motion, LFUCG asserts that in past cases the Commission has interpreted 807 KAR 5:001, Section 11(4), to prohibit the introduction of evidence into a proceeding after the close of testimony, and LFUCG asserts that testimony closed on May 24, 2019, when Kentucky-American filed its responses to the post-hearing data requests.").

[2] *See Elec. Application of Louisville Gas & Electric Co. for an Adjustment of its Electric and Gas Rates, A CPCN to Deploy AMI, Approval of Certain Regulatory and Accounting Treatments, and Establishment of a One-Year Surcredit*, Case No. 2020-00350, Order at 10 n.4 (Ky. PSC Nov. 1, 2021) ("Regulation 807 KAR 5:001, Section 11(4) establishes that evidence cannot be received by the Commission after the close of testimony, unless ordered by the Commission. Although hearing testimony closed on August 18, 2021, the Commission's August 19, 2021 Order that established post-hearing dates allowed for the Commission to receive evidence through August 27, 2021, **when responses to post-hearing data requests were due**.") (emphasis added)

[3] *See Elec. Investigation of the Proposed Pole Attachment Tariffs of Incumbent Local Exchange Carriers*, Case No. 2022-00108, Order at 6-7 (Ky. PSC July 8, 2022) ("While the Commission has granted motions to strike when a party files evidence **after the record is closed** pursuant to 807 KAR 5:001, Section 11(4) …") (emphasis added)

discovery. If an intervenor could simply strike any data request that might expose unfavorable facts or undermine its position, post-hearing discovery would be rendered meaningless.

Additionally, LFUCG's reliance upon *Jessamine-South Elkhorn Water District, Water Service Corporation of Kentucky*, and *Barker v. East Kentucky Power Cooperative* is misplaced, because each of these cases are readily distinguishable. In each of these three cases, the moving party sought to strike all or a portion of another party's post-hearing *brief*, alleging that it contained information that fell outside of the record (i.e., after the "close of testimony").[4] These cases are inapplicable here for several key reasons.

First, unlike the movants in the cited cases, LFUCG targets a data request and its exhibits rather than a post-hearing brief. The material LFUCG challenges was allowed to be submitted at this stage pursuant to the Commission's October 20, 2026 Order. This distinction is significant: the cases LFUCG relies on involved briefs filed after the close of the discovery that contained or referred to information that was not already in the record, whereas discovery in this matter was ongoing when KAWC issued Question No. 3. Second, testimony in this matter had not yet closed under either of the prior standards applied by the Commission.

KAWC could couple this response with an accompanying motion to compel LFUCG to respond to its properly issued Question No. 3. But KAWC has not done so because Question No. 3 is premised on LFUCG's own publicly available records.[5] This fact permits KAWC to address

[4] *See Application of Jessamine-S. Elkhorn Water Dist. for a CPCN to Construct and Finance a Waterworks Improvement Project Pursuant to KRS 278.202 and 278.300*, Case No. 2012-00470, Order at 4-5 (Ky. PSC Jan. 3, 2014) ("We found that JSEWD's introduction of such materials **through 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."); *see Application of Water Serv. Corp. of Ky. for an Adjustment of Rates*, Case No. 2013-00237, Order at 7 (Ky. PSC July 11, 2014) ("For these reasons, we will strike the following portions of WSKY's **brief** …"); *see Barker v. E. Ky. Power Cooperative Inc*., Case No. 2013-00291, Order at 10-11 (Ky. PSC July 6, 2015) ("EKPC points to four specific items **in Complainants' brief** that it contends comprise new evidence which should be stricken from the record.") (emphasis added to all).

[5] See Section IV below describing the Commission's ability to take administrative notice of the facts set forth in Question No. 3 that are based on LFUCG's own publicly available information. Should KAWC's reference to such

the issue raised in Question No. 3 in KAWC's upcoming November 9, 2025 post hearing brief, which is: *when a utility ignores or delays needed capital investments, the resulting "catch up" causes tremendous rate increases when those capital investments inevitably have to be made.* This is exactly what happened with LFUCG's wastewater rates as Question No. 3 establishes. It is also exactly what KAWC is trying to avoid with its planned investments.

II. Question No. 3 and the Accompanying Documents Are Relevant to the Matter Before the Commission.

LFUCG's position must be viewed in light of the threshold fact that it is a party to this proceeding. LFUCG presented witnesses who testified under oath and were subject to discovery and cross-examination, as the Commission's process contemplates. With all due respect to Mayor Gorton, however, she appeared at the hearing in her official capacity as LFUCG's elected leader and offered public comments critical of KAWC as the party's representative. By identifying herself as the Mayor and speaking on behalf of all Lexington customers, it was clear her remarks were made in her official capacity and not merely on her own individual behalf as a KAWC customer. Under those circumstances, KAWC should have a fair opportunity to address the assertions she made on LFUCG's behalf. As a party, LFUCG could have identified Mayor Gorton as a witness. KAWC then would have questioned her regarding LFUCG's sewer rate increases which are relevant to her comments regarding the magnitude and timing of KAWC's rate increases. But because Commission protocol does not permit cross-examination of public commenters, KAWC had no opportunity to do so at the hearing. A post-hearing data request directed to LFUCG, the party on whose behalf Mayor Gorton spoke and the governmental entity

publicly available information in its upcoming November 9, 2026 post hearing brief result in another LFUCG motion to strike, for the reasons set forth herein, that motion to strike should be denied as well.

she leads, is therefore KAWC's only practical means of obtaining that information and responding to her comments.[6]

LFUCG's characterization of Mayor Gorton's statement is telling. In its Motion to Strike, LFUCG states that Mayor Gorton's statement consisted of "factually accurate statements."[7] In LFUCG's own words, Mayor Gorton did not merely intend to raise an opinion or highlight a shared concern, she sought to provide the Commission with facts she considered persuasive. And she did so without being placed under oath, and without the chance to be cross-examined. This is prejudicial to KAWC.

Georgetown Municipal Water & Sewer Service ("GMWSS") serves as an illustrative counterpoint. Like LFUCG, it is an intervenor in this case. GMWSS, however, provided a member of its board, and its general manager, as witnesses. In turn, both testified under oath and were subject to cross-examination. By contrast, LFUCG brought its chief executive before the Commission, but without the opportunity for cross-examination.

KAWC does not contend that an individual who offers public comment thereby becomes a party to the proceeding or subjects themselves to discovery or cross-examination. This situation is materially different. Here, the chief executive of an intervening party used the public comment process to make factual assertions purportedly on behalf of the organization she leads. Under those circumstances, basic principles of fairness require that KAWC be afforded a meaningful opportunity to test and respond to those assertions. At a minimum, KAWC should be permitted to

[6] LFUCG's assertion that Question No. 3 is flawed because it lacks identification of a specific LFUCG witness to respond to the question is quite novel and would establish a new precedent at the Commission. *See*, LFUCG Motion to Strike at 5-6. If this were true, as LFUCG suggests, parties would not have to respond to most data requests they receive, which generally are directed at the entity rather than a particular witness. Striking a data request on this basis would represent, at the very least, a significant departure from established Commission protocol.

[7] *See* LFUCG Motion to Strike at 6 ("Mayor Gorton, as the chief executive of Kentucky's second largest city, appeared at the public comment portion of the hearing and made factually accurate statements about the history of KAWC's rate increases.").

obtain discovery from LFUCG concerning factual matters that LFUCG itself chose to place before the Commission through this unusual means.

Regardless of whether public comments are considered "evidence" in the case record, the Commission consistently references the content of public comments in its Orders.[8] In other words, the public comments serve to achieve more than mere satisfaction of public meeting requirements; they form an integral portion of the pool of information under consideration by the Commission. Where that process is stretched to the limit of its purpose (if not beyond), it becomes even more important to permit KAWC an opportunity to clarify the record through limited post-hearing discovery.

III. Question No. 3 was Not Intended to Harass or Embarrass LFUCG. It was Intended Solely to Clarify Assertions Raised by Mayor Gorton's Public Comment.

The question, and the documents supporting it, were not introduced into the record to manufacture a new argument out of whole cloth, or for any other improper purpose. Rather, KAWC simply seeks LFUCG's confirmation of certain *publicly available* additional facts that speak to the amount of consideration the Commission should afford to the Mayor's implication that KAWC's rates are unreasonable. The increases in LFUCG's sewer rates provide the Commission context in which to assess her comments regarding KAWC's rates.

Mayor Gorton's public comment suggested that the increases in KAWC's rates during her tenure have been unusual and extraordinary. Question No. 3 directly addresses that premise. It asks LFUCG to confirm publicly available information showing that its own sewer rates have

[8] *See Elec. Consideration of the Implementation of the Net Metering Act*, Case No. 2019-00256, Order at 3 (Ky. PSC Sep. 4, 2019) ("[P]ublic comments often affect the Commission's decisions. For example, when significant public comments raised a concern about an economic development rider paid by utility customers, the Commission engaged in further discovery and found that that rider should be discontinued.") (citing *Elec. Application of Ky. Power Co.*, Case No. 2017-00179, Order at 35-36 (Ky. PSC Jan. 18, 2018)).

increased substantially over the past decade as LFUCG has undertaken needed capital investment in its sewer system after entering into a Consent Decree with the U.S. EPA. Mayor Gorton did not specifically address LFUCG's sewer rates; however, she did squarely place the reasonableness of KAWC's rate increases at issue. LFUCG's own experience as a utility provider, including the magnitude of the rate increases necessary to support capital investment in its own sewer system after being mandated to fix the system, is highly probative of that issue. Question No. 3 therefore does not introduce an unrelated subject. Rather, it provides relevant context for evaluating the very premise Mayor Gorton presented to the Commission on LFUCG's behalf.

Question No. 3 also gave LFUCG the opportunity to deny the veracity of the information set forth in the request and to provide correct information if the information in the request is inaccurate. LFUCG did not admit, deny, or correct the information in the request. Instead, it refused to respond and seeks to strike the question itself.

IV. The Commission May Take Administrative Notice of the Publicly Accessible Attachments Accompanying Question No. 3.

In any event, the Commission may take administrative notice, *sua sponte*, of Question No. 3's quote from LFUCG's website and the attachments accompanying Question No. 3, which are all publicly accessible government documents, the authenticity of which are not in dispute. The Commission has held that 807 KAR 5:001, Section 11(4) provides it with the inherent authority to admit undisputed facts into the record, even after the close of testimony.[9] Applying this authority, the Commission has repeatedly taken administrative notice of publicly accessible information in prior cases.[10] LFUCG's website and the documents accompanying Question No. 3 consist of a

[9] *See Joint Application of Kenergy Corp. and Big Rivers Elec. Corp. for Approval of Contracts and for a Declaratory Order*, Case No. 2013-00221, Order at 25 (Ky. PSC Aug. 13, 2013).

[10] *See Elec. Investigation of the Service, Rates and Facilities of Ky. Power Co.*, Case No. 2021-00370, Order at 1 (Ky. PSC Oct. 28, 2021) (taking administrative notice of American Electric Power's news releases sua sponte); *see also Application of Jessamine-S. Elkhorn Water Dist. for a CPCN to Construct and Finance a Waterworks Improvements*

link to LFUCG's publicly accessible website regarding its Consent Decree with the EPA and the Commonwealth, and the minutes from several LFUCG Urban County Council meetings, at which the Council voted to raise sewer rates. The Commission possesses the authority to take administrative notice of them, even if KAWC's data request goes unanswered.

CONCLUSION

Question No. 3 was timely introduced and is directly relevant to these proceedings and was advanced to provide context to the assertions LFUCG introduced into this proceeding through its chosen use of the public comment process. And, ultimately, the Commission may take administrative notice of the documents accompanying the question. For these foregoing reasons, KAWC respectfully requests that the Commission deny LFUCG's Motion to Strike.

Project Pursuant to 278.020 and 278.300, Case No. 2014-00084, Order at 2-3 (Ky. PSC July 23, 2015) (taking administrative notice of property records maintained by the Jessamine County PVA).

Dated: November 6, 2026

Respectfully submitted,

___/s/ Lindsey Ingram_____
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CERTIFICATE OF COMPLIANCE

In accordance with 807 KAR 5:001, Section 8(7), this is to certify that the electronic filing has been transmitted to the Commission on November 6, 2026, and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

_____/s/ Lindsey Ingram_____
Counsel for Kentucky American Water Co.