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Commonwealth of Kentucky
Before the Public Service Commission

OCT 01 2009
PUBLIC SERVICE
COMMISSION

In the Matter of:

TARIFF FILING OF KENTUCKY-AMERICAN)
WATER COMPANY TO REVISE THE) Case No. 2009-00124
KENTUCKY RIVER AUTHORITY)
WITHDRAWAL FEE)

ATTORNEY GENERAL'S
MOTION FOR ABEYANCE

The Attorney General, through his Office of Rate Intervention, submits this Motion to hold this proceeding in abeyance. In support of his Motion, the Attorney General notes the following.

The Commission's inquiry in this proceeding focuses upon the "reasonableness and lawfulness of Kentucky-American's proposed tariff revision."¹ In furtherance of the inquiry, the Commission permitted any party to the proceeding to file written comments on three issues set forth by the PSC's 18 August 2009 Order.² Each issue focuses upon the reasonableness of the tariff filing; therefore, discussion on these points addresses a policy call under the assumption that the Commission has the subject-matter jurisdiction to weigh these factors and make a determination regarding reasonableness.

¹ Order, 18 August 2009, page 1.

² Order, 18 August 2009, page 7.

With regard to the issue of the lawfulness of the mechanism, the Attorney General notes that, presently, judicial reviews of the Commission's authorization of an accelerated mains replacement mechanism and the Commission's authorization of reduced rate service are pending before the Supreme Court of Kentucky.³ Consequently, determinations by Commonwealth's highest Court regarding Commission jurisdiction are approaching. The Attorney General believes that there is a high probability that the determinations will provide guidance regarding the lawfulness of this mechanism.

The procedural schedule for this proceeding is a matter within the discretion of the Commission. There is no statutory deadline for the proceeding; furthermore, there are no exigent circumstances compelling a decision by a particular date. While the Commission may proceed with its inquiry into the reasonableness of this tariff provision, the Attorney General submits that it is appropriate to hold this matter in abeyance pending final decisions by the Commonwealth's highest Court concerning the extent of Commission power. If the Commission does not have the power to authorize Kentucky-American's tariff provision for the Kentucky River Authority Withdrawal Fee, then questions regarding reasonableness are moot. For this reason, abeyance is appropriate.

The Attorney General also notes that the initial approval of the Kentucky-American Water tariff provision dates back to the Commission's 19 November 1993 Order in Case No. 92-452. While this proceeding is in abeyance, the

³ 2008-SC-000483; 2008-SC-000489; 2009-SC-000134; and 2009-SC-000150.

Commission-approved “status quo” which has otherwise been in place for approximately 16 years will simply remain in place. See KRS 278.390.

The AG cannot identify any harm to Kentucky-American given that it seeks “the continued approval of the line-item recovery method of the KRA fee.”⁴ Rather than seek an end to the provision while awaiting the Supreme Court’s decisions in the pending cases, the Attorney General is willing to allow the status quo to continue during the abeyance. (If it turns out that there are no issues regarding the lawfulness of this provision, then there will simply have been a relatively minor delay.)

The Attorney General also notes that while a lack of comment (including a lack of objection) is a potential default by the Attorney General for a matter that is properly pending before Commission, subject-matter jurisdiction cannot be created (including through stipulation or acquiescence). It is either the case that the Commission has the authority to approve the provision or it does not. In the event that it does not, then the provision is unlawful.

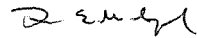
Once the Supreme Court has rendered its decisions and they become final, if there is a need to consider subject-matter jurisdiction (or Commission authority), then the matter of the lawfulness of the provision will be ready for review. If there is no issue regarding the lawfulness of the provision, then the inquiry regarding its reasonableness can continue.

⁴ KAWC Memorandum in Support of Line-Item Recovery Method of the KRS Water Use Fee, page 5.

WHEREFORE, the Attorney General respectfully moves that the Commission hold this proceeding in abeyance.

Respectfully submitted,

JACK CONWAY
ATTORNEY GENERAL



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Certificate of Service and Filing

Counsel certifies that an original and ten photocopies of this Motion for Abeyance were served and filed by hand delivery to Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; furthermore, it was served by mailing a true and correct of the same, first class postage prepaid, Lindsey W. Ingram III, Stoll Keenon Ogden PLLC, 300 West Vine Street, Suite 2100, Lexington, Kentucky 40507-1801, Jack B. Bates, Bates and Skidmore, 415 W. Main Street, Suite 2, Frankfort, Kentucky 40601, Robert Warren Myles, 100 North Main Street, Lawrenceburg, Kentucky 40342, and Hance Price, Frankfort Electric & Water Plant Board, P. O. Box 308, Frankfort, Kentucky 40602, all on this 1st day of October, 2009.


Assistant Attorney General