

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|   |   |                     |
|---|---|---------------------|
| THE JOINT PETITION OF KENTUCKY-AMERICAN | ) |                     |
| WATER COMPANY, THAMES WATER AQUA        | ) |                     |
| HOLDINGS GmbH, RWE                      | ) |                     |
| AKTIENSGESELLSCHAFT, THAMES WATER       | ) |                     |
| AQUA US HOLDINGS, INC., APOLLO          | ) | CASE NO. 2002-00317 |
| ACQUISITION COMPANY AND AMERICAN        | ) |                     |
| WATER WORKS COMPANY, INC. FOR           | ) |                     |
| APPROVAL OF A CHANGE OF CONTROL OF      | ) |                     |
| KENTUCKY-AMERICAN WATER COMPANY         | ) |                     |

ORDER

Public Citizen has moved for full intervention in this matter. Bluegrass FLOW, Inc. has submitted a memorandum in support of Public Citizen's motion. The Joint Applicants have filed a response in opposition to the motion. Having considered the motion and the responses thereto, we deny the motion.

Public Citizen is a non-profit corporation organized under the laws of the District of Columbia. It advances two arguments in support of its motion for intervention. It states that its advocacy of public ownership of water utilities establishes a special and unique interest in this proceeding that is not otherwise adequately represented. It further states that its intervention is likely to present issues or to develop facts that will assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings.

Administrative Regulation 807 KAR 5:001, Section 3(8), which governs intervention in Commission proceedings, provides:

If the commission determines that a person has a special interest in the proceeding which is not otherwise adequately represented or that full intervention by the party is likely to present issues or to develop facts that will assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings, such person shall be granted full intervention.

Public Citizen's advocacy of public ownership of water utilities does not establish a special interest in this proceeding. As we noted in Case No. 2002-00018, the question of public ownership is not relevant to our review of an application for transfer of control of a public utility: Kentucky-American Water Company, Case No. 2002-00018 (Ky.PSC May 30, 2002) at 8 ( the Commission's focus must be upon the qualifications of the acquiring party and the potential effects of the proposed transfer ). See also Pub. Serv. Com'n v. Cities of Southgate, Highland Heights, Ky., 268 S.W.2d 19 (1954). Nothing currently within the record of this proceeding and nothing within Public Citizen's motion suggests that public ownership of Kentucky-American Water Company's facilities is relevant to the current proceeding.

We further find nothing within Public Citizen's motion to support the proposition that its intervention in this proceeding is likely to develop facts that will

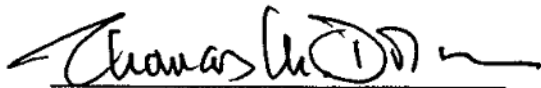
assist in the full consideration of the Joint Application.<sup>1</sup> While Public Citizen may operate an Internet site with a large number of resources on the globalization of water resources and international multi-utility ownership, as Bluegrass FLOW argues, this operation is not a sufficient basis for permitting intervention. As the Internet site is already accessible to the general public, any of the parties or this Commission may draw upon these resources without the Commission granting intervention to Public Citizen.

IT IS THEREFORE ORDERED that Public Citizen's motion to intervene is denied.

Done at Frankfort, Kentucky, this 3<sup>rd</sup> day of October, 2002

By the Commission

ATTEST:



Executive Director

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<sup>1</sup> We note two differences in Public Citizen's participation in this proceeding and that of Bluegrass FLOW. Bluegrass FLOW participated in the prior proceeding. Moreover, Bluegrass FLOW's membership includes citizens of Fayette County who may be affected by the outcome of this proceeding.

DISSENTING OPINION OF COMMISSIONER ROBERT E. SPURLIN

I agree with the majority that the question of local ownership is beyond the scope of this proceeding. If Lexington-Fayette Urban County Government chose to purchase and Kentucky-American Water Company chose not to sell, then issues concerning local ownership of a utility would be properly considered in a condemnation action before the Fayette Circuit Court. However, I would still grant Public Citizen's motion to intervene. Public Citizen is an established national consumer advocate with access to a vast network of resources. I agree with the Attorney General that Public Citizen's participation in this proceeding would assist the Commission in fully considering the proposed acquisition. I am reluctant to exclude any participant that could help the Commission render a fair and just decision. Instead, I believe that our intervention rules should be liberally construed to ensure that the Commission considers a variety of perspectives before rendering a decision that will directly affect thousands of central Kentuckians. For these reasons, I respectfully dissent.

  
Robert E. Spurlin, Commissioner

ATTEST:

  
Executive Director