

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE PETITION OF KENTUCKY-AMERICAN)	
WATER COMPANY FOR APPROVAL OF THE)	CASE NO. 2005-00214
TRANSFER OF CONTROL AND OWNERSHIP OF)	
JACOBSON PARK)	

ORDER

Bluegrass FLOW, Inc. (“FLOW”) has moved for full intervention in this matter. Kentucky-American Water Company (“Kentucky-American”) opposes the motion. Having considered the motion and the response thereto, we deny the motion.

FLOW is a non-profit organization that is organized under KRS Chapter 273 and whose purpose is “to research, publish, and educate generally . . . as to the comparative benefits of local ownership of water utilities”¹ FLOW advances two arguments in support of its motion for intervention. First, it states that it has a special interest in this proceeding that is not otherwise adequately represented based upon its position that “it is in the public interest that local water facilities should be locally owned.”² Second, it asserts that it is likely to present issues or develop facts that will assist the Commission in fully considering Kentucky-American’s petition to transfer control of Jacobson Park to the Lexington-Fayette Urban County Government (“LFUCG”).

¹ Case No. 2004-00103, Adjustment of Rates of Kentucky-American Water Company (Ky. PSC Sep. 1, 2004) at 1.

² Motion at 1.

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.

FLOW has failed to demonstrate any special interest in this proceeding. It is not merely enough that a party articulate or espouse a position on an issue that is before the Commission. That party must be directly affected by the requested relief.³ FLOW has not identified the effects of the proposed transfer of ownership of Jacobson Park on its members. As FLOW fails to identify in its motion the persons or groups that comprise its membership, we are unable to determine if those persons are affected by the proposed transfer.

We further note that the Attorney General, who has intervened in this matter, and the LFUCG represent many, if not all, of the persons and interests that are likely to be affected by the proposed transfer. The AG has the statutory duty “to represent and appear on behalf of consumers’ interests.” KRS 367.150(8)(a). This duty extends to all Kentucky-American customers and all members of the public. Likewise, the LFUCG has asserted that its appearance is on “its own behalf and behalf of the residents of

³ See, e.g., Case No. 1997-00209, Application of Meade County Rural Electric Cooperative Corporation for a Decrease in Existing Rates (Ky. PSC Sept. 19, 1997) at 3.

Fayette County, Kentucky.”⁴ As the LFUCG is a local government, it appears to have a more direct and compelling interest in local control of water utilities than FLOW.

We are also unable to find that FLOW is likely to present issues and develop facts that may assist our consideration of Kentucky-American’s proposed transfer of control of Jacobson Park. In its motion FLOW states that its intervention will permit it to raise issues that the LFUCG Council refused to address when voting upon the agreement to obtain Jacobson Park. These issues, however, are unrelated to utility rates and service and instead focus upon the LFUCG’s proprietary decisions.

The purpose of our decision to require that Kentucky-American obtain our approval before transferring ownership of Jacobson Park was the protection of citizens of Lexington and Fayette County from the arbitrary sale or misuse of that property. As those citizens’ elected government has reached an accommodation with Kentucky-American on the ownership and control of that property, this purpose has been accomplished. To delve into the details of that transaction or to question the LFUCG’s negotiation tactics is well outside the Commission’s intent and of little relevance.⁵

IT IS THEREFORE ORDERED that FLOW’s Motion to Intervene is denied.

⁴ Case No. 2004-00103, Adjustment of Rates of Kentucky-American Water Company (Ky. PSC Sep. 1, 2004) at 3.

⁵ While we deny FLOW’s Motion to Intervene, we have permitted FLOW and all other persons to submit comments on the proposed transfer. Those comments are in the record of this proceeding.

Done at Frankfort, Kentucky, this 16th day of December, 2005.

By the Commission

ATTEST:



Executive Director

Case No. 2005-00214