

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

Kentucky-American Water Company ("KAWC") has applied for approval of the transfer of control and ownership of the land upon which Jacobson Park is located to Lexington-Fayette Urban County Government ("LFUCG"). At issue is whether the proposed transfer is consistent with the public interest. Finding in affirmative, we grant the application and approve the proposed transfer.

KAWC owns approximately 386.3 acres of property in Fayette County, Kentucky, that is known as Jacobson Park and includes a reservoir that KAWC and Lakeside Golf Course use. In March 28, 1968, Lexington Water Company, a predecessor to KAWC, leased this property to Fayette County and the city of Lexington for a period of 25 years for the purpose of establishing public recreational facilities. In return for this lease, the lessees were to pay an annual rental fee of ten dollars. In 1968, Fayette County assigned all of its interest in this lease to the city of Lexington and its successors. On October 16, 1991, LFUCG, as successor to the city of Lexington and Fayette County, exercised its right to renew the lease for an additional period of 25 years.

On May 16, 2005, KAWC and LFUCG executed an amendment to the lease agreement. Under the terms of this amendment, the lease will terminate on January 2,

2011 and at the termination of this lease KAWC will convey its interests in Jacobson Park to LFUCG subject to certain conditions.<sup>1</sup>

In Cases No. 2002-00018<sup>2</sup> and No. 2002-00317,<sup>3</sup> the Commission approved the transfer of control of KAWC to RWE Aktiengesellschaft, Thames Water Aqua Holding GmbH, and Thames Water Aqua US Holdings, Inc. subject to certain conditions. Among these conditions were that KAWC “obtain Commission approval prior to any transfer of control or ownership of the land upon which Jacobson Park is located.”<sup>4</sup> The purpose of our decision to require that KAWC obtain this approval “was the protection of citizens of Lexington and Fayette County from the arbitrary sale or misuse of that property.”<sup>5</sup>

On June 1, 2005, KAWC applied to the Commission for approval of the proposed transfer of control and ownership of Jacobson Park to LFUCG. The Commission

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<sup>1</sup> These conditions include: (1) the property be used solely for public park and recreational purposes and (2) LFUCG pay KAWC the fair market value of the property in the event it acquires through eminent domain proceedings all or substantially all of KAWC’s property and assets that are used to provide water service and the property is not included in those proceedings.

<sup>2</sup> Case No. 2002-00018, Application for Approval of Transfer of Control of Kentucky-American Water Company to RWE Aktiengesellschaft and Thames Water Aqua Holding GmbH (Ky. PSC May 30, 2002).

<sup>3</sup> Case No. 2002-00317, The Joint Petition of Kentucky-American Water Company, Thames Water Aqua Holdings GmbH, RWE Aktiengesellschaft, Thames Water Aqua US Holdings, Inc., Apollo Acquisition Company and American Water Works Company, Inc. for Approval of a Change of Control of Kentucky-American Water Company (Ky. PSC Dec. 20, 2002).

<sup>4</sup> Case No. 2002-00018, Order of May 30, 2002, App. A at 2 (Condition 7); Case No. 2002-00317, Order of December 20, 2002, App. A at 2 (Condition 7).

<sup>5</sup> Case No. 2005-00214, Order of December 16, 2005 at 3.

directed KAWC to publish notice of the proposed transfer and invited the public to file written comments on the proposed transfer. The Commission further offered all parties<sup>6</sup> to this proceeding the opportunity to comment upon the proposed transfer. Only two entities, the Attorney General (“AG”) and Bluegrass FLOW, Inc. (“FLOW”) submitted comments.<sup>7</sup>

Stating that the proposed transfer “appears wholly consistent with the intent of the corresponding condition of approval,” the AG offers no objection.<sup>8</sup> The AG cautions, however, that the Commission’s approval does not “constitute a declaration of the rights and duties of the parties for matters falling outside the scope of the Commission’s authority.”<sup>9</sup>

In its comments, FLOW is critical of the limited discussion that Lexington-Fayette Urban County Council permitted on the proposed transfer agreement. It requests that the Commission conduct a hearing on the proposed transfer as the Commission “would be the only forum in which questions can be raised and issues discussed.”<sup>10</sup> It argues that a complete environmental study of the property should be conducted prior to any

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<sup>6</sup> The Commission has granted the Attorney General and LFUCG leave to intervene in this proceeding. Finding that it lacked a special interest in this proceeding and had failed to demonstrate that it was likely to present issues or to develop facts that would assist the Commission, the Commission denied the motion of Bluegrass FLOW, Inc. for leave to intervene.

<sup>7</sup> Although it did not submit any comments in response to the request for public comment, LFUCG in its motion for intervention stated that it had no objection to the proposed transfer.

<sup>8</sup> AG’s Response to the Commission’s August 11, 2005 Order at 2.

<sup>9</sup> Id.

<sup>10</sup> Public Comment from Bluegrass FLOW, Inc. at 2.

transfer. It further argues that KAWC should be required to maintain the dam on the property and that the Commission should “attach to its approval conditions designed to preserve the value to the public of the proposed transfer and the public safety.”<sup>11</sup>

Having carefully considered FLOW’s comments, we find its requests to be beyond the scope of this proceeding. The purpose of this proceeding is not to address the general merits of LFUCG’s acquisition of Jacobson Park or the potential liabilities that such acquisition may impose on LFUCG. Those issues are not directly related to the provision of utility service and are far better addressed by elected representatives of the citizens of Lexington and Fayette County. By their approval of the amendment to the lease agreement, these representatives have made their decision.

As LFUCG’s elected officials have reached an agreement with KAWC on the ownership of Jacobson Park and as the purpose of Condition 7 was to protect the citizens of Lexington and Fayette County from the arbitrary sale or misuse of that property, we find that the proposed transfer is consistent with the intent of Condition 7, is reasonable, and should be approved.

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<sup>11</sup> Id. at 3. FLOW also urges the Commission to postpone this proceeding until a referendum election is held on whether LFUCG should acquire all of KAWC’s water production, treatment, and distribution assets through eminent domain. The Kentucky Supreme Court’s decision in Rogers v. Lexington-Fayette Urban County Government, 175 S.W.3d 569 (Ky. 2005), however, renders this request moot.

IT IS THEREFORE ORDERED that:

1. KAWC's application is granted.
2. The proposed transfer of control and ownership of the land upon which Jacobson Park is located from KAWC to LFUCG is approved.
3. FLOW's request for a public hearing in this matter is denied.

Done at Frankfort, Kentucky, this 28<sup>th</sup> day of April, 2006.

By the Commission

ATTEST:



Executive Director