

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

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

KENTUCKY-AMERICAN WATER COMPANY'S
RESPONSE TO BLUEGRASS FLOW INC.'S
MOTION FOR FULL INTERVENTION

Kentucky-American Water Company ("Kentucky American Water") opposes Bluegrass FLOW, Inc.'s ("BG Flow") Motion for Full Intervention in this proceeding filed in the record on July 7, 2005.

Full intervention is governed by 807 KAR 5:001, Section 3(8), which requires that (1) the applicant has a special interest in the proceeding which is not otherwise adequately represented or (2) the applicant is likely to present issues or develop facts that will assist the Commission in deciding the matter before it. BG Flow's Application falls short on both requirements.

BG Flow states that its special and unique interest in this proceeding is that it endorses the position of municipal ownership of water facilities, including, without limitation, Jacobson Park and related real property. This Commission has previously considered the "unique interest" of BG Flow and has determined that there is "no legal authority to support the proposition that the public policy of this Commonwealth favors municipal ownership over private ownership."¹

¹ Order dated December 20, 2002, Case No. 2002-00317, p. 11.

BG Flow also suggests that it wants to raise “certain questions and issues for discussion”² which it was unable to raise before the Lexington-Fayette Urban County Government Council (“the Council”). Any failure of the Council to provide BG Flow with an opportunity to be heard is a matter that should be raised with the Council or pursued in litigation. It is not a subject within even the broadest possible construction of the jurisdiction of the Public Service Commission.

BG Flow also raises the question of its lack of opportunity to raise the question of whether an environmental study should be conducted by the Lexington-Fayette Urban County Government (“LFUCG”). Whether an environmental study should be conducted is a decision to be made by the LFUCG, not BG Flow, and not the Public Service Commission.

Next, BG Flow suggests that the Public Service Commission needs to consider the ownership of the dam which impounds the lake partially located in Jacobson Park. Kentucky American Water owns the dam, does not propose to transfer it, intends to maintain it as an integral part of its water storage system,³ and has made adequate provisions in the documentation to do so.

Lastly, BG Flow suggests that this matter be held in abeyance until there has been a resolution of a referendum election. The propriety, validity or legality of any referendum petition is not before this Commission and waiting for a resolution of the issues involved surrounding a referendum petition is not logical or reasonable.

By appropriately adopted resolution, the Council has authorized its Mayor to sign the Amendment to the Lease (Exhibit 3 to the Application) which contemplates the execution and delivery into escrow of the General Warranty Deed attached to the Amendment to the Lease as

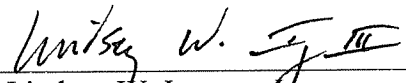
² There is no listing of the questions and issues to be raised other than the impact of the future value of Jacobson Park, ownership of the dam and the environmental study.

³ The Commonwealth of Kentucky has a comprehensive scheme for regulating dams at 401 KAR 4.

Exhibit A. The parties thereto having agreed, BG Flow should not be permitted to interject totally extraneous matters into the process and its request for full intervention should be denied.

Respectfully submitted,

KENTUCKY-AMERICAN WATER COMPANY

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CERTIFICATE OF SERVICE

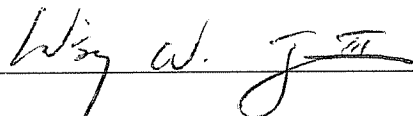
This is to certify that a true and correct copy of the foregoing pleading has been served by mailing same, postage prepaid, on this 15th day of July, 2005, to the following:

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