

LAW OFFICES  
**MARTIN, OCKERMAN & BRABANT LLP**

TELEPHONE (859) 254-4401  
FAX 859-231-7367  
www.KyCounsel.com

200 NORTH UPPER STREET  
**LEXINGTON, KENTUCKY 40507**

**RECEIVED**  
JUL - 7 2005  
PUBLIC SERVICE  
COMMISSION  
WILLIAM B. MARTIN  
(1895-1975)

July 6, 2005

Ms. Beth O'Donnell  
Executive Director  
Public Service Commission  
211 Sower Blvd.  
Frankfort, KY 40601

re: Petition of Kentucky-American Water Co.  
No. 2005-00214

Dear Ms. O'Donnell:

Enclosed please find for filing the original and five (5) copies of the motion of Bluegrass FLOW, Inc. to intervene in the above reference case. Please contact me if you need additional material. Thank you.

Very truly yours,

MARTIN, OCKERMAN & BRABANT LLP

  
Foster Ockerman, Jr.

FOJ/ms

RECEIVED  
JUL - 7 2005  
PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of: ]  
] ]  
PETITION OF KENTUCKY-AMERICAN ] CASE NO. 2005-00214  
WATER COMPANY FOR APPROVAL OF ]  
TRANSFER OF CONTROL AND ]  
OWNERSHIP OF JACOBSON PARK ]

---

BLUEGRASS FLOW, INC.  
MOTION TO INTERVENE

---

Bluegrass FLOW, Inc., (“BGFlow”) hereby moves for full intervention in the above styled Matter pursuant to 807 KAR 5:001, Section 3(8). In support of its motion, Bluegrass FLOW, Inc., states:

1. Bluegrass FLOW, Inc., is a Kentucky nonprofit, nonstock corporation, with a mailing address of:

Bluegrass FLOW, Inc.  
c/o Foster Ockerman, Jr.  
200 N. Upper St.  
Lexington, KY. 40507

and an email address in care of: ockerman@kycounsel.com.

2. BGFlow has a special and unique interest in this proceeding which is not otherwise adequately represented, to wit: BGFlow endorses the position that it is in the public interest that local water facilities should be locally owned, including, without limitation, Jacobson Park and related real property.

3. In addition, BGFlow desires to raise certain questions and issues for discussion before the Commission which were not permitted to be raised by it and members of the public at-large when

the proposed transfer and related agreements were presented to the Lexington-Fayette Urban County Council for consideration for the reason that, at the very beginning of that portion of the agenda when questions and comments could be presented, a motion to “call the question” and terminate discussion was made and passed, whereupon the Council voted on the main motion to enter into certain agreements with Petitioner regarding, *inter alia*, transfer of control and ownership of Jacobson Park and related real property without public comment. The Commission’s hearings will be the only forum, as a result, in which questions can be raised and issues discussed. Among the matters to be discussed is whether the valuation method proposed by the documents under which control and ownership of Jacobson Park would be transferred, in the event of future action by the Urban County Government to acquire the Park, would result in a higher value, and thus greater cost to the community, than in the absence of such provisions.

4. The arbitrary procedure followed by the majority of the Urban County Council in terminating debate and discussion prevented the question being raised of whether a full environmental study has been or should be conducted before the Urban County Government acquires any ownership interest in Jacobson Park and associated real property. Decades of automotive exhaust along the highway which bisects the lake (only a portion of which is proposed to be conveyed to the Government) and the resulting contaminants which precipitate into the water warrant such an investigation and analysis of the results before transferring ownership and control, and therewith a level of responsibility for remedial actions, to the public through the Government.
5. A significant component of the consideration for inducing the Government to accept the proposed transfer of ownership and control is the presence of the Lake between Jacobson Park and the golf

course; however, the dam which impounds the Lake is not being conveyed, nor is there evident in the documents any requirement on Petitioner to maintain the dam so as to preserve the existence of the Lake and the value to the community of the proposed transfer. At a minimum, the Commission, if it were to approve the Petition, should attach to its approval conditions designed to preserve the value to the public of the proposed transfer.

6. By ordinance adopted by the Urban County Council on June 17, 2005, the Council acknowledged the presentation to it of citizen petitions containing a sufficient number of signatures of registered voters and directed the petitions to the Fayette County Clerk for the purpose of conducting a referendum election on the question of whether the Urban County Government should acquire the assets of Petitioner, including Jacobson Park and related real property. Copies of said ordinance and the transmittal letter to the Fayette County Clerk are attached hereto. If the referendum election results in the adoption of an ordinance directing the acquisition of said assets, this Petition will become moot. Therefore, BGFlow moves the Commission to postpone any hearings on the Petition until after November 8, 2005, the anticipated date of the referendum election; or, alternatively, that if the Petition is approved prior thereto, that the Commission include as part thereof a condition that such an approval shall only be effective in the event of a defeat of the referendum election.
7. Full intervention by BGFlow is likely to present additional issues and/or develop facts which will assist the Commission in fully considering the instant matter without unduly complicating or disrupting the proceedings.

Wherefore, Bluegrass FLOW, Inc., requests it be granted full intevenor status in the above styled

Matter.

Respectfully submitted,

MARTIN, OCKERMAN & BRABANT LLP  
200 N. Upper St.  
Lexington, KY 40507  
(859) 254-4401

A handwritten signature in black ink, appearing to read "Foster Ockerman, Jr.", is written over a horizontal line.

Foster Ockerman, Jr.  
ockerman@kycounsel.com  
Attorneys for Bluegrass FLOW, Inc.

CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing Motion to Intervene was served by first class mail, postage prepaid, upon the following on this the 6<sup>th</sup> day of July, 2005.

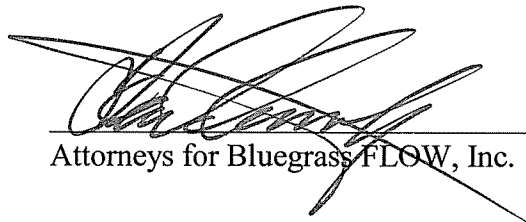
Beth O'Donnell  
Executive Director  
Public Service Commission  
211 Sower Dr.  
PO Box 615  
Frankfort, KY 40601

Hanley A. Ingram  
Lindsey W. Ingram, Jr.  
Stoll, Keenon & Park LLP  
300 W. Vine St., Suite 2100  
Lexington, KY 40507

David Barberie  
Lexington-Fayette Urban Co. Gvt.  
200 E. Main St.  
Lexington, KY 40507

David Edward Spenard  
Assistant Attorney General  
1024 Capital Center Dr., Suite 200  
Frankfort, KY 40601-8204

Nick O. Rowe  
Kentucky-American Water Co.  
2300 Richmond Rd.  
Lexington, KY 40502



Attorneys for Bluegrass FLOW, Inc.

Lexington  
Fayette  
Urban  
County  
Government



OFFICE OF THE COUNCIL CLERK

June 20, 2005

Don Blevins  
Fayette County Clerk  
162 East Main Street  
Lexington, KY 40507

Dear Mr. Blevins:

I have been directed by the Lexington-Fayette Urban County Council to send you a copy of Ordinance No. 139-2005, which was passed at a meeting of the Council held on June 17, 2005.

This Ordinance is to transmit to the Fayette County Clerk pursuant to Section 12.04 of the Charter of the Lexington-Fayette Urban County Government and KRS 67A.060(2) and 89.610, for the purpose of taking all necessary and appropriate legal steps, a voter initiated Ordinance pertaining to the question of the passage of an Ordinance authorizing and directing the Lexington-Fayette Urban County Government to purchase by the most cost effective and reasonable means, including by the exercise of the right of eminent domain, (1) all the real and personal property of Kentucky-American Water Company located within Fayette County, Kentucky and (2) all the real and personal property of Kentucky-American Water Company located within Jessamine, Woodford, Scott, Harrison, Bourbon, and Clark Counties, Kentucky, which is a part of the same integrated water supply and distribution system that provides water service to residents of Fayette County, and which ordinance includes other related information.

Your attention to this matter is greatly appreciated.

Sincerely,

Liz Damrell  
Council Clerk

c: Mayor Teresa Ann Isaac  
Milton Dohoney, CAO  
Council Members  
David Holmes, Dept. of Law

ORDINANCE NO. 139 - 2005

AN ORDINANCE TRANSMITTING TO THE FAYETTE COUNTY CLERK PURSUANT TO SECTION 12.04 OF THE CHARTER OF THE LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT AND KRS 67A.060(2) AND 89.610, FOR THE PURPOSE OF TAKING ALL NECESSARY AND APPROPRIATE LEGAL STEPS, A VOTER INITIATED ORDINANCE PERTAINING TO THE QUESTION OF THE PASSAGE OF AN ORDINANCE AUTHORIZING AND DIRECTING THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT TO PURCHASE BY THE MOST COST EFFECTIVE AND REASONABLE MEANS, INCLUDING BY THE EXERCISE OF THE RIGHT OF EMINENT DOMAIN, (1) ALL THE REAL AND PERSONAL PROPERTY OF KENTUCKY-AMERICAN WATER COMPANY LOCATED WITHIN FAYETTE COUNTY, KENTUCKY AND (2) ALL THE REAL AND PERSONAL PROPERTY OF KENTUCKY-AMERICAN WATER COMPANY LOCATED WITHIN JESSAMINE, WOODFORD, SCOTT, HARRISON, BOURBON, AND CLARK COUNTIES, KENTUCKY, WHICH IS A PART OF THE SAME INTEGRATED WATER SUPPLY AND DISTRIBUTION SYSTEM THAT PROVIDES WATER SERVICE TO RESIDENTS OF FAYETTE COUNTY, PROVIDED, HOWEVER, THAT THE GOVERNMENT SHALL NOT BE REQUIRED TO PURCHASE SAID ASSETS IF THE COST OF THE ASSETS CANNOT BE REPAID IN A COMMERCIALY REASONABLE MANNER SOLELY FROM THE REVENUES GENERATED FROM THE OPERATION OF THE ASSETS, AND TO ISSUE ITS BONDS, BOND ANTICIPATION NOTES, AND OTHER FINANCING INSTRUMENTS FOR THE PURPOSE OF PAYING THE COSTS OF THE ACQUISITION AND ACQUISITION PROCEEDINGS; AUTHORIZING AND DIRECTING APPROPRIATE OFFICIALS OF THE GOVERNMENT TO TAKE ANY AND ALL FURTHER ACTION AND EXECUTE AND DELIVER ALL DOCUMENTS REASONABLY NECESSARY TO EFFECTUATE THE PURPOSE OF THIS ORDINANCE; AUTHORIZING AND DIRECTING THE COUNCIL TO ADOPT AN ORDINANCE CREATING A WATER AUTHORITY TO OPERATE AND MANAGE THE ASSETS OF THE WATER COMPANY; AND FINDING THAT ACQUISITION OF THE SAID ASSETS IS NECESSARY FOR THE INTENDED PUBLIC USES OF (1) ESTABLISHING A MUNICIPALLY-OWNED WATER UTILITY FOR THE PRIMARY PURPOSE OF SUPPLYING THE GOVERNMENT AND ITS INHABITANTS WITH WATER AND (2) PROVIDING PARKLAND TO THE GOVERNMENT AND ITS INHABITANTS; DIRECTING THE COUNCIL CLERK TO DELIVER A COPY OF THIS ORDINANCE TO THE FAYETTE COUNTY CLERK; AND DIRECTING THE COUNCIL CLERK TO PUBLISH SAID INITIATED ORDINANCE PURSUANT TO KRS CHAPTER 424.

WHEREAS, pursuant to Section 12.04 of the Charter of the Lexington-Fayette Urban County Government and KRS 67A.060(2) and 89.610, a petition certified by the Fayette County Clerk to be signed by a number of duly qualified and registered voters (electors) equal to at least twenty-five (25%) per cent of the total number of votes cast for both candidates for Mayor at the last preceding regular election for the office of the Mayor of the Lexington-Fayette Urban County Government stating the residence of each signer, verified by the affidavits of one or more persons as to the signature and residence of the signers thereof, and requesting the Council of the Lexington-Fayette Urban County Government to pass an ordinance set forth therein concerning the acquisition by the Government of the assets of Kentucky-American Water Company, was filed with the Council on June 9, 2005; and



WHEREAS, on June 14, 2005 at a special meeting, the Urban County Council by a vote of six (6) ayes and nine (9) nays failed to adopt said initiated ordinance.

NOW, THEREFORE, be it ordained by the Council of the Lexington-Fayette Urban County Government, as follows:

Section 1 - That the following Initiated ordinance shall be transmitted to the Fayette County Clerk pursuant to Section 12.04 of the Charter of the Lexington-Fayette Urban County Government and KRS 67A.060(2) and 89.610 for the purpose of taking all necessary and appropriate legal steps pertaining to said Initiated ordinance:

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AUTHORIZING AND DIRECTING THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT TO PURCHASE BY THE MOST COST EFFECTIVE AND REASONABLE MEANS, INCLUDING BY THE EXERCISE OF THE RIGHT OF EMINENT DOMAIN, (1) ALL THE REAL AND PERSONAL PROPERTY OF KENTUCKY-AMERICAN WATER COMPANY LOCATED WITHIN FAYETTE COUNTY, KENTUCKY AND (2) ALL THE REAL AND PERSONAL PROPERTY OF KENTUCKY-AMERICAN WATER COMPANY LOCATED WITHIN JESSAMINE, WOODFORD, SCOTT, HARRISON, BOURBON, AND CLARK COUNTIES, KENTUCKY, WHICH IS A PART OF THE SAME INTEGRATED WATER SUPPLY AND DISTRIBUTION SYSTEM THAT PROVIDES WATER SERVICE TO RESIDENTS OF FAYETTE COUNTY, PROVIDED, HOWEVER, THAT THE GOVERNMENT SHALL NOT BE REQUIRED TO PURCHASE SAID ASSETS IF THE COST OF THE ASSETS CANNOT BE REPAID IN A COMMERCIALY REASONABLE MANNER SOLELY FROM THE REVENUES GENERATED FROM THE OPERATION OF THE ASSETS, AND TO ISSUE ITS BONDS, BOND ANTICIPATION NOTES, AND OTHER FINANCING INSTRUMENTS FOR THE PURPOSE OF PAYING THE COSTS OF THE ACQUISITION AND ACQUISITION PROCEEDINGS; AUTHORIZING AND DIRECTING APPROPRIATE OFFICIALS OF THE GOVERNMENT TO TAKE ANY AND ALL FURTHER ACTION AND EXECUTE AND DELIVER ALL DOCUMENTS REASONABLY NECESSARY TO EFFECTUATE THE PURPOSE OF THIS ORDINANCE; AUTHORIZING AND DIRECTING THE COUNCIL TO ADOPT AN ORDINANCE CREATING A WATER AUTHORITY TO OPERATE AND MANAGE THE ASSETS OF THE WATER COMPANY; AND FINDING THAT ACQUISITION OF THE SAID ASSETS IS NECESSARY FOR THE INTENDED PUBLIC USES OF (1) ESTABLISHING A MUNICIPALLY-OWNED WATER UTILITY FOR THE PRIMARY PURPOSE OF SUPPLYING THE GOVERNMENT AND ITS INHABITANTS WITH WATER AND (2) PROVIDING PARKLAND TO THE GOVERNMENT AND ITS INHABITANTS.

WHEREAS, acquisition by the Lexington-Fayette Urban County Government of the assets of Kentucky-American Water Company described in this Ordinance is necessary for the following intended public uses: (1) establishing a municipally-owned water utility that will operate

the existing integrated water supply and distribution system of Kentucky-American Water Company which currently provides service to the inhabitants of Fayette County for the primary purpose of supplying the Lexington-Fayette Urban County Government and its inhabitants with water and (2) providing parkland to the Lexington-Fayette Urban County Government and its inhabitants; and

WHEREAS, control of the water system currently serving customers of Kentucky-American Water Company in Fayette County by an agency of the Lexington-Fayette Urban County Government is the only way to guarantee long-term ownership stability of the system; and

WHEREAS, the creation of a local water authority empowered to place operational responsibility in the hands of professional managers is the best way to assure that water service is permanently managed in the best interest of the Lexington-Fayette Urban County Government and its inhabitants;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That the Lexington-Fayette Urban County Government be and hereby is authorized and directed to purchase by the most cost effective and reasonable means, including, without limitation, the exercise of the right of eminent domain: (1) all of the real and personal property of Kentucky-American Water Company that is located within Fayette County, Kentucky, and (2) all of the real and personal property of Kentucky-American Water Company located within Jessamine, Woodford, Scott, Harrison, Bourbon, and Clark Counties, Kentucky, which is a part of the same integrated water supply and distribution system that provides water service to residents of Fayette County; provided, however, that the Lexington-Fayette Urban County Government shall not be required to purchase said assets if the cost of the assets cannot be repaid in a

commercially reasonable manner solely from the revenues generated from the operation of the assets.

Section 2 – That the Lexington-Fayette Urban County Government be and hereby is authorized and directed to issue its bonds, bond anticipation notes, and other financing instruments for the purpose of paying the costs of the acquisition and the acquisition proceedings, including, without limitation, costs associated with legal and consulting services, and all other costs associated with the acquisition and the acquisition proceedings.

Section 3 – That the Mayor, the Commissioner of Finance, the Commissioner of Law, the Clerk of the Urban County Council, and all other appropriate officials of the Lexington-Fayette Urban County Government be and hereby are authorized and directed to take any and all further action and to execute and deliver all necessary petitions, contracts, legal, financial and other documents as may be reasonably necessary to effect: (1) the acquisition by the Lexington-Fayette Urban County Government of the assets of Kentucky-American Water Company described in this Ordinance, including, without limitation, by the exercise of the right of eminent domain and (2) the financing and payment of the costs of the acquisition and acquisition proceedings, in order to effectuate the purpose of this Ordinance.

Section 4 – That the Council of the Lexington-Fayette Urban County Government be and hereby is authorized and directed to adopt an ordinance creating a water authority for the purpose of operating and managing the assets of Kentucky-American Water Company acquired by the Lexington-Fayette Urban County Government.

Section 5 – That the preamble to this Ordinance be, and the same is, hereby incorporated herein by reference, the same as if set out in full.

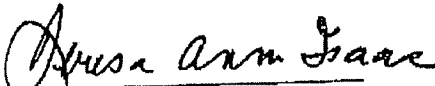
Section 6 – That this Ordinance shall become effective upon its passage.

Section 2 – The Council Clerk is hereby authorized and directed to deliver a copy of this Ordinance to the Fayette County Clerk and to publish said Initiated ordinance pursuant to KRS Chapter 424. A copy of the petition and Initiated ordinance is attached hereto and made a part hereof by reference.

Section 3 – That the preamble to this Ordinance be, and the same is, hereby incorporated herein by reference, the same as if set out in full.

Section 4 – That this Ordinance shall become effective upon its passage.

PASSED URBAN COUNTY COUNCIL: June 17, 2005

  
MAYOR

ATTEST:

  
CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: June 22, 2005-1c

G:DLH/sb/Ord006