

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

<b>THE INVESTIGATION INTO THE FEASIBILITY )</b>	
<b>AND ADVISABILITY OF KENTUCKY-AMERICAN )</b>	
<b>WATER COMPANY’S PROPOSED SOLUTION TO )</b>	<b>CASE NO. 2001-117</b>
<b>ITS WATER SUPPLY DEFICIT )</b>	

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**RESPONSE OF KENTUCKY-AMERICAN WATER  
COMPANY TO MOTION OF BLUEGRASS  
FLOW, INC. TO INTERVENE**

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Kentucky-American Water Company, Inc. (“Kentucky-American”) respectfully submits this Response to the Motion of Bluegrass FLOW, Inc. (“FLOW”) for full intervention in this proceeding. FLOW does not have a special interest in the proceeding which is not otherwise adequately represented. Further, FLOW is not likely to present issues or develop facts that assist the Commission in fully considering the matters at issue in this proceeding without unduly complicating or disrupting the proceedings. Thus, FLOW’s Motion for full intervention should be denied pursuant to 807 KAR 5:001, § 3(8).

In support of its Motion to Intervene, FLOW asserts that it has two special interests that are not otherwise adequately represented. The first alleged “special interest” is that it “advocates the position it is in the public interest that local water facilities should be locally owned.” Motion to Intervene at 1. It is correct that no one else in this proceeding advocates the position that local water facilities should be locally

owned.<sup>1</sup> The identity of the owner of local water facilities, however, is not an issue in this proceeding. Thus, FLOW's first alleged "special interest" is not at issue and does not need representation in this proceeding.

FLOW's second alleged "special interest" is that "there is or may be an alternative source of supply which ought to be considered by the Commission." Motion to Intervene at 1. Unfortunately, FLOW has not revealed any other information about this alleged alternative source of supply. Again, the purpose of this proceeding is to investigate the advisability and feasibility of the Kentucky River as a proposed solution to Kentucky-American's water supply deficit. Order of January 28, 2002, Appendix A. Its purpose is not to receive undefined "alternative source[s] of supply." FLOW apparently does not propose to offer any information regarding the Kentucky River issues identified in Appendix A to the Order of January 28, 2002, herein.

A person must have a special interest in the proceeding that is not otherwise adequately represented in order to be entitled to full intervention under 807 KAR 5:001, § 3(8). Clearly, FLOW does not have such special interest.

FLOW is also not likely to present issues or develop facts that assist the Commission in fully considering the issues in this proceeding without unduly complicating or disrupting the proceedings, as required by the regulation. In its Motion to Intervene, FLOW alleged in conclusory fashion that it would meet this prong of the regulation's requirements, but it set forth no facts to support its conclusion. According to numerous public filings and statements by FLOW's counsel and its directors, FLOW's sole purpose is to ensure that Kentucky-American is "locally owned" and that the merger

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<sup>1</sup> The Attorney General and the Lexington-Fayette County Urban Government seem to be at least somewhat allied with FLOW in Case No. 2002-00018, but their positions on local ownership of local water facilities have not been articulated.

that was approved in Case No. 2002-00018 not go forward. For example, on its Internet site, FLOW sets forth the question, “What is Bluegrass FLOW?” It provides the following answer: “Bluegrass FLOW is a private non-profit citizens group working to ensure local control over our water resources – and our future – in the Bluegrass region.” It is difficult to see how a non-profit corporation whose sole purpose relates to the control of Kentucky-American could present issues or develop facts that would assist the Commission in its determination of a proposed solution to Kentucky-American’s water supply deficit. Moreover, as FLOW demonstrated in Case No. 2002-00018, its mission is to do anything it can to impede or delay the merger of American Water Works Company, Inc. The presence of FLOW in this proceeding will, without question, complicate and disrupt the proceedings. Thus, FLOW cannot satisfy the second prong of 807 KAR 5:001, § 3(8).

For the foregoing reasons, the Motion of FLOW to Intervene should be denied.

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### **CERTIFICATION**

In conformity with paragraph 10 of the Commission's Order dated May 15, 2001, herein, this is to certify that the electronic version of this pleading is a true and accurate copy of this pleading filed in paper medium; that Kentucky-American Water Company has notified the Commission, the Attorney General, N.O.P.E., Inc, the Bluegrass Water Supply Consortium, the Lexington-Fayette Urban County Government and Bluegrass FLOW, Inc. by electronic mail that the electronic version of this pleading has been transmitted to the Commission; that a copy has been served by mail upon David E. Spenard, Esq., Assistant Attorney General, and Dennis Howard, Esq., Assistant Attorney General, Utility and Rate Intervention Division, 1024 Capital Center Drive, Suite 200, P.O. Box 2000, Frankfort, Kentucky, 40602-2000; David Barberie, Esq., Lexington-Fayette Urban County Government, Department of Law, 200 East Main Street, Lexington, Kentucky 40507; Anthony G. Martin, Esq., P.O. Box 1812, Lexington, Kentucky 40588; Phillip J. Shepherd, Esq. and Joe F. Childers, Esq. 307 West Main Street, P.O. Box 782, Frankfort, Kentucky, 40602; Damon R. Talley, Esq., P.O. Box 150, 112 North Lincoln Boulevard, Hodgenville, Kentucky 42748; Foster Ockerman, Jr., Esq., Martin, Ockerman & Brabant, 200 North Upper Street, Lexington, Kentucky 40507 and Gerald E. Wuetcher, Esq., Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, and that the original and three (3) copies have been filed with the Public Service Commission in paper medium, all on this 5th day of September 2002.

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Counsel for Kentucky-American Water  
Company