

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE JOINT PETITION OF KENTUCKY-AMERICAN]	
WATER COMPANY, THAMES WATER AQUA]	
HOLDINGS GmbH, RWE AKTIENGESELLSCHAFT]	Case No. 2002-00317
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]	

REPLY OF BLUEGRASS FLOW, INC.
TO JOINT APPLICANTS' RESPONSE

Comes Bluegrass FLOW, Inc. and tenders its Reply to the Response of the Joint Applicants to its Motion for Rehearing herein.¹

In reviewing the Response of Joint Applicants to Bluegrass FLOW's motion for rehearing, counsel is reminded of the old advice:

"When the law is against you, argue the facts.
When the facts are against you, argue the law.
When both are against you, pound the table."

The purpose of a motion for rehearing is not to present evidence or "prove" anything, as is argued in the Response. Under KRS 278.400, any party may apply for a rehearing on specified matters. The merits of the matter are not to be argued in the motion -- else there would never need to be a hearing. The motion serves only to bring to the attention of the Commission matter(s) about which the Order

¹ In so doing, Bluegrass FLOW, Inc., does not waive its position that the transfer of control applied for is void as a matter of law, and that this proceeding has been rendered moot.

to which to motion is addressed is incomplete, or misinterprets, or warrants a fuller exploration by the Commission in a new hearing or other reason why rehearing should obtain.

Rehearing was requested on two issues:

1. Proposed waiver of the KRS 278.020(6) exemption.
2. Protections against the impact of international treaties.

On the first point, an explanation was offered which the Order stated had not been heretofore, proposing that rehearing should be had to fully explore the topic. The Order proposes a condition limiting the transfer of Kentucky-American stock, true. It does not address any conditions on the transfer of AWW stock, or TWUS stock, to one of the twenty-eight (28) Canadian or Mexican subsidiaries of RWE and the potential effect thereof. Such a potential transfer of stock is no more speculative than a potential transfer of ownership of Jacobson Park, to which the Commission did address a condition. Rehearing should be had to determine whether a waiver or further conditions are appropriate to protect the public interest.

On the second point, a point of agreement among the witnesses was illustrated and evidence offered (its value to be determined on rehearing) that, in fact, the United States has been requested to submit water supply and services to GATS. The Response does not deny that fact, which was not considered by the Commission and should be; and even goes further to advise the Commission that a final decision on the question is not hypothetical but is actually scheduled to be

rendered by January 1, 2005 by the WTO.² In light of that fact, there is even stronger reason for the Commission to hold rehearing to learn about the potential impact thereof and act accordingly to protect the public interest.

To warrant rehearing, a movant need not prove the point it would pursue in a rehearing; it need only satisfy the Commission that there is a matter which the Commission should further explore before it makes a final Order which will then subject to judicial review. The burden of proof always rests upon the Applicants until the final Order, when it then shifts to any party seeking appellate review.

On the first matter, in its Order of December 20th, the Commission stated that insufficient explanation had been offered in the first hearing; in effect, inviting a motion for rehearing on the point to provide more information.

On the second matter, the fact that the Response provides additional information (in addition to the *Request* of the European Community supplied in the motion) about the evolving debate of water supply and services under GATS (which, incidently, impliedly contradicts expert testimony offered by the Applicants), justifies rehearing.

For the reasons stated in its motion and herein, Bluegrass FLOW, Inc. respectively requests rehearing.

Respectfully submitted,

² The factual accuracy of that alleged date, of course, should be tested itself on rehearing, as well as any impact of an adverse decision.

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NOTICE AND CERTIFICATE OF SERVICE

Counsel gives notice that the original and three copies of this document have been filed with the Public Service Commission by sending same by first class mail, postage prepaid, to Mr. Thomas M. Dorman, Executive Director, Public Service Commission, 211 Sower Blvd., Frankfort, KY 40611, by uploading this document (together with the required Index and Read1st documents) to the file transfer protocol site designated by the Executive Director, and by service of a hardcopy of same upon the individuals listed below on this the 22nd day of January, 2003. Counsel also certifies that the electronic version has been transferred to the Commission, and the Commission and other parties have been notified by electronic mail that the electronic version has been transmitted to the Commission.

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