

Commonwealth of Kentucky  
Before the Public Service Commission

In the Matter of: )  
Application for Approval of the Transfer of Control )  
Of Kentucky-American Water Company to RWE AG )  
And Thames Water Aqua Holdings GmbH )

Case No. 2002-00018

AFFIDAVIT OF RICHARD T. EADES

State of West Virginia )  
County of Berkeley )

Richard T. Eades, being first duly sworn, states the following: The prepared Pre-filed Direct Testimony constitutes the direct testimony of the Affiant in the above-styled case. Affiant further states that, to the best of his belief and knowledge, his statements made are true and correct. Further, Assiant saith not.

*Richard T. Eades*  
Richard T. Eades

SUBSCRIBED AND SWORN to before me this 6<sup>th</sup> day of November, 2002.



*Lois A. Brady*  
NOTARY PUBLIC

My Commission Expires: 19 November 2011

My name is Rick Eades. My business address is 1617 McClung Street, Charleston, WV, 25301.

I am President of Geo Interactive Associates, an environmental and geographic information/computer system support small business.

I have been asked by Bluegrass FLOW, Inc. a nonprofit corporation chaired by former Kentucky Governor Edward T. Breathitt, to develop comments regarding the proposed sale of Kentucky-American Water (KAW) to RWE, a multinational corporation based in Germany. RWE recently purchased Thames Water Aqua Holdings, making Thames a wholly owned subsidiary of RWE. The sale of KAW is proposed as a transaction to Thames. My comments address aspects of the sale of KAW to a multinational, foreign-based corporation, and more specifically the potential or risks involved with conflicts and resolution of those conflicts between the proposed investor and the state, should they arise. My comments generally address the question of whether that sale is consistent with public interests.

In the 3-plus years prior to forming this company in June 2002, I worked as an independent consultant contractor, on matters relating to water supply and quality, groundwater, bottled water business developments, education, and public policy related to water. Prior to that time, I worked during a span of 16 years in environmental consulting, frequently assessing risks to water and water supplies for numerous government and private clients. I was employed by Science Applications International Corporation from 1980 to 1986, in positions of increasing responsibility; the University of Massachusetts at Amherst from 1986 to 1988 as a research assistant; by Environmental Compliance Services in western Massachusetts from 1988 to 1989; and, by Midwest Research Institute from 1989 to 1996. During that portion of my career, I examined risks to groundwater and surface water in numerous settings, many of which potentially or directly placed public drinking water at risk of contamination or dewatering. I also served as a facilitator on many occasions with state environmental regulatory programs to determine how best to streamline their regulatory processes, frequently focusing on data collection, data management, assessing sites and responding to situations that presented environmental and human health risks. From 1980 to 1996, I worked in support of mining interests where substantial quantities of water were withdrawn causing impacts to public water users; at Superfund sites where water resource impacts had been documented; at military bases where base water supply issues arose; in underground tank compliance and environmental response to releases; in regulatory policy implementation and in wastewater treatment system evaluation. In 1996, I entered and completed an innovative education program at the University of North Carolina at Chapel Hill, and in 1999 I returned to my home state West Virginia in an independent contractor capacity dealing with public policy, water supply, water monitoring, water-related educational courses and internships. As a legislative analyst/lobbyist I have read and responded to environmental laws and regulations covering a range of topics, all related to water, at both the state and federal level. I have specifically tracked the progression of purchasing of water resources by corporations, using the information obtained in educational classes taught for both high school and college credit. This tracking of water-related purchases

by various corporate interests initially focused on spring water or bottled water acquisitions, and involved research on Appalachian Region spring waters, regional and national supply issues, and water supply issues on a global level.

During the period from 1999 to present, I have reviewed scores of documents, reports, and articles pertaining to corporate acquisition of water. The following comments regarding the sale of KAW to RWE/Thames reflect several elements of this acquisition as it relates to the question of whether the sale is consistent with public interests.

#### The sale

Though conditions have been placed on the sale of KAW to RWE/Thames, it is uncertain if push came to shove that the international corporation would not move their conflicts beyond state or national U.S. courts and into the world courts of the World Trade Organization (WTO). Most of the following comments support my position that it is reasonable to consider the sale of KAW to RWE/Thames as not being in the best interest of the public. The following sections of my testimony address but a few reasons for concern for the public interests, including the recent leak of documents that suggest GATS be expanded to include water supplies as services (including those in the U.S.) that would fall under trade agreements of the WTO. A few case studies, illustrating some realized public concerns are also offered.

#### The General Agreement on Trade in Services (GATS) and the WTO

In April 2002, document leaks from the European Union revealed the EU's objectives in terms of expanding the trade in services, that are ultimately governed under the WTO, to include water. The leaked documents clearly show the EU intends and apparently has asked 29 countries including the U.S. to open up the water sector for international competition, including water collection, purification for public use, distribution to the public and wastewater treatment.

Public concern seems reasonable, given that had the documents not been leaked, the general public might never have had access to the draft request lists, where those 29 countries were being asked to open water sales to the General Agreement on Trade in Services (GATS) process and oversight. The clock is now running, with the June 2002 deadline passed for all WTO members to identify the service sectors they want to add to existing GATS commitments. A March 2003 deadline now approaches for countries to identify what services they will be willing to give up to privatization, including water. Hence, the request by the EU to 29 countries, including the U.S., to include water as an environmental service that can be privatized seems relevant to the KAW sale. Should the U.S. agree to this request, a new dimension in privatization and international corporate control will certainly exist. Under expanded sectors that include water, the GATS and WTO would seem, based on some WTO history, to favor multinational corporate interests, and protect those trading international corporations with questionable prior knowledge and involvement of the public that stands to be affected.

The public interest is supposed to be addressed by a self-stated "transparency" of the GATS process. At the WTO website, [www.wto.org](http://www.wto.org), the GATS agenda is described in general as, "wishing to establish a multilateral framework of principles and rules for trade in services with a view to the expansion of such trade under conditions of transparency and progressive liberalization." That condition of transparency is more than questionable given the leaked EU documents.

Once the EU documents were leaked, WTO director-general reportedly responded, saying it was "simply untrue" to characterize GATS agenda to "somehow require developing countries to privatize public services, including water supply." Such statements leave room for public concern in that they direct the discussion to angles such as GATS "requiring" (quotes mine) privatization, when in fact, that is not the issue. GATS promoting privatization, in concert with others (e.g. the World Bank, International Monetary Fund, or other WTO entities) can result in pressure being placed on governments that struggle to fund their water infrastructure needs to turn to privatization to receive funding support.

Without direct sharing of such agendas as that addressed in the April 2002 leaked EU documents, legislators and the public at large are not realistically offered timely participation in the process of moving public water supplies toward sales to international conglomerates like RWE/Thames and other sizable corporations who have moved heavily into the water market.

Though the WTO contends that the GATS will not have the power to abolish regulation by any government in terms of water distribution, GATS may by opening the water service market sector in a way that would allow causes of action where the investor or corporate interests pursue differing interpretations of what government regulations state, or what their intent is. That is one pathway to draw into question the application of national water protection regulations and elevate the argument to the decision-making bodies of the WTO. Interpretation of regulatory language, rather than statute, is an apparent loophole in the WTO position that countries and their citizens would be fully able to impose their regulations without ending up in world court.

The WTO also states that Article XIV has a General Exception which says "nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures necessary to protect human, animal, or plant life or health." While this exception sounds protective of national water regulations, the governing country (or state) may adopt measures and still not be able to enforce them. Even if they were able to enforce regulations, the burden of proof would seem to lie with the government to prove that the regulations protect human, animal, or plant life or health. Such proof might be more easily established in the courts of the country or state, but could easily become more ambiguous in world courts where different definitions of protection may apply.

The WTO also published denials that they are after public water. The leaked GATS documents seem to contradict this position. At the least, certain WTO member countries

and blocks of countries are after expanded rights to privatize water under the umbrella of the WTO.

#### Selected case studies that raise concerns

Note that only a few cases are mentioned below, and many others may also bring pertinent understanding to the positions offered herein.

##### *Bolivia*

In 1999, the World Bank participated in recommending Cochabamba, Bolivia's water be sold to Drinking Water and International Water, a subsidiary of Bechtel. Only one bid was considered. Water rates increases were reported to exceed 100%. Law passage followed which removed subsidies from basic services and apparently further fostered the privatization deal. Shortly after that acquisition, the price hikes for water led to poor citizens of Bolivia being unable to afford water and demonstrations ensued. Accounts list up to 6 deaths from the demonstrations and government attempts to restore order which including imposing Martial Law. Ultimately, the protest resulted in reversal of government positions and an effective annulment of the Bechtel contract. Now Bechtel is suing in international courts for \$25 million in damages. Clearly, in this example privatization did not meet the goal of assisting citizens in acquiring water. It is also an example that large corporations will elevate their damages or suits to international courts where the potential more than exists to circumvent or supercede or override sovereign laws of a country, i.e. the U.S. in regard to the proposed KAW sale.

In one report, even report rainwater collection in Bolivia, from rooftops, without a permit was noted as illegal under the privatized water agreement. Hence, public self-determination for accessing or augmenting water supplies outside of the privatized agreement was apparently precluded.

##### *Indonesia*

In 1997, with the support of the World Bank, the water in Jakarta, Indonesia was split between Thames Water and Suez Lyonnaise des Eaux. With collaboration with the Suharto dictatorship, water prices increased sharply and jobs were cut. Since Suharto has been overthrown, opposition to the water privatization has grown and demanded that the deal be undone, though the World Bank does not support such action. This position by the World Bank further indicates the collaborative nature of internationally powerful entities to command and control water services. That collaborative agreements for privatization exist elsewhere with conflicts arising from a disgruntled public is some reason for concern with the clout that RWE and subsidiary Thames can collectively bring to their corporate driven agenda.

##### *Buenos Aires*

In a promise to privatize the Buenos Aires water system, Suez Lyonnaise offered to invest \$1 billion dollars, yet only put up \$30 million and drawing a World Bank for the remaining 97% of the offer.

The potential may exist that subsidies may be required or leveraged by large corporations to help underwrite infrastructure maintenance and repairs, which may not be in the public's best interest if those subsidies or underwriting do not return directly to the needed repairs or maintenance. Certainly public mistrust is justified where large corporations influence government bodies and benefit financially from that arrangement. Think Enron or other corporations who, while misleading the public also received substantial tax breaks from the government.

#### *Canada*

Sun Belt Water, a Californian corporation had as a joint venture acquired a license to export water from British Columbia. British Columbia passed a 1995 law to prohibit such exports, subsequently setting with Sun Belt's Canadian corporate partner, but not Sun Belt, which failed in its claim for compensation in British Columbia courts. Sun Belt has claimed that Canada breached obligations and international laws or treaties and has filed a lawsuit to collect damages from lost business opportunity for \$10.5 billion. This example is a demonstration of corporate interests receiving an unfavorable verdict in a national court and then elevating that claim to an international setting.

Certainly the potential exists that should citizens of Kentucky and their elected and appointed representatives ever decide to return their public water to state of national interests, an international or European-based corporation might replicate this example and sue the state or nation. Such a scenario would not be in the best interests of citizens, win or lose, with the potential for attendant costs to the public.

#### A new of scale in terms of profit driven motives

The scale of international corporate interest in water cannot be denied. That those corporations seek to return the highest possible profits to investors, in the competitive world should be self-evident. When reports note that European companies dominate the global water market sector, they point to two of the largest companies, Vivendi and Ondeo (formerly Suez Lyonnaise des Eaux) as providing more than 100 million households with water each. These larger companies apparently have water interests in up to 120 countries. As a competitor to Vivendi and Ondeo (Suez), it seems reasonable to assume that RWE/Thames must seek both expanded markets and increased profits. It is also reasonable to assume that such a huge corporation might be hard pressed to devote resources to infrastructure repairs and maintenance, delay or avoid such reinvestments, as targeted profit levels might dictate.

The relevance of these larger companies to the KAW sale to RWE/Thames also lies in the collective clout that can be inferred from financial interests collectively of multiple parties and the WTO might be compelled to do to protect those interests.

That the international corporation(s) will depend on increased consumption to drive profits higher also cannot be denied. In terms of public interests, the issue of water conservation cannot be looked upon as gaining favor under the control of profit-driven international giants.

In addition, the largest international water companies have purchased substantial United States interests, including Vivendi's purchase of U.S. Filter. Hence, the U.S. public water service sector is on the radar screen and clearly a target for multinational and foreign corporations. For corporations like RWE/Thames to remain competitive in securing markets like that of KAW, it would appear that they would have to match the profit margins of competitors to secure the necessary investments to expand.

World Bank roles in promoting water privatization and potential to protect corporations  
When viewing the World Bank role in fostering privatization, the suspension of a multi-million dollar loan to Paraguay apparently resulted from Paraguay's decision not to privatize water. By contrast, the World Bank approved a substantial loan to Ghana when the pre-condition of a 95% increase in water tariffs was accepted by Ghana.

Of interest the World Bank agreements are considered to be "intellectual property" and open to no public access in terms of details of how those World Bank projects affect citizens lives.

Again the transparency question is raised. Again the answer appears to be that large global entities have available mechanisms to push or foster privatization where public access to information is denied or withheld.

In a telling comment on the status of public citizen or individual beliefs about water privatization, John Briscoe, The World Bank's Senior Water Advisor stated in a memo following the World Water Forum of March 2000 in the Netherlands, "it is clear that the emerging consensus in the Bank on the importance of private sector participation and pricing is not shared by most of the communities with which we interact."

Estimates of the potential water market reach to \$800 billion annually by the World Bank. U.S. water markets have been estimated at \$90 billion in annual sales value. These are substantial sales volumes, and where such potential exists the largest of the world's corporations would seem most likely to elevate their causes (or causes of action) to the WTO decision-making process and world courts.



### Summary

Water corporations primary interests lie in profits. Many combined mechanisms exist to foster privatization and effectively underwrite it, turning over public services to international corporate control. Competition for water services, especially among very large European-based firms appears to be high.

To contend that national or state regulations will restrict international conglomerate corporations from seeking remedy in international judicial systems when they fail to receive a satisfactory decision in national courts does not seem reasonable. To the contrary, should the GATS service sector open public water services to sales (and subsequently WTO oversight), the likelihood is strong that such international corporations would, as they deemed necessary, seek remedy in world courts. That the EU is seeking an opening of trade to be inclusive of water services seems beyond argument.

If causes of action by the investor against a state of federal government arise, it is reasonable to conclude that those causes of action could wind up in world courts or the courts of the WTO, where multinational corporate interest may be protected at the expense of citizens. Several examples of this very phenomena have already been shown on the world stage, including one involving water purchases in British Columbia.

Protecting public water supplies and services operates on the premise that national and state laws will win the day if or when international corporations contest those laws. It is exactly that likelihood - that world trade entities could move the process to world courts where national or state laws are "super-ceded" as needed for corporate profit motives to be met - that presents the most likely danger to fulfilling assurances of deals like the KAW to RWE/Thames sale represent.

In my opinion, the sale of KAW water services to RWE/Thames is not in the public interest.