

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)	
AKTIENSGESELLSCHAFT, THAMES WATER)	
AQUA US HOLDINGS, INC., APOLLO)	CASE NO. 2002-00317
ACQUISITION COMPANY AND AMERICAN)	
WATER WORKS COMPANY, INC. FOR)	
APPROVAL OF A CHANGE OF CONTROL OF)	
KENTUCKY-AMERICAN WATER COMPANY)	

ORDER

Lexington-Fayette Urban County Government (“LFUCG”) has moved to compel the Joint Applicants’ response to certain interrogatories and requests for production of documents. The Joint Applicants have submitted a response in opposition to the motion. Having considered the motion and the response, we grant the motion in part and deny in part.

LFUCG moves to compel Joint Applicants to respond to Requests 16 through 19 of its Initial Request for Information. These requests pertain to Jacobson Park and the Joint Applicants’ future plans for this property.¹ LFUCG argues that Joint Applicants’

¹ The requests are:

16. Please indicate whether the Applicants intend to continue to utilize Jacobson Park as part of the KAWC system, and, if so, for how long. In the event that the Applicants do not intend to utilize Jacobson Park as part of the KAWC system for at least the remaining period of the existing lease agreement with the LFUCG, describe in detail for how long such use is intended, and what the Applicants intend to do with the park once it is no longer useful as part of the KAWC system.

17. Please provide all internal memoranda prepared by or for any of the Applicants that discusses future plans for Jacobson Park.

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response to its requests were non-responsive. It further argues that its requests are relevant to this proceeding as they are critical to the Commission's determination of whether the proposed transaction is in the public interest and as they address significant changes in circumstances that have occurred since the conclusion of Case No. 2002-00018.²

Joint Applicants argue that the issue of Jacobson Park was addressed in the earlier proceeding and that LFUCG merely seeks to plow old ground with its present request. It notes that the Commission has already attached conditions to the proposed transaction, as originally proposed, that address the future of Jacobson Park.

While this ground has been previously plowed, we have previously ruled that discovery into possible "changes of circumstances" is permissible. LFUCG's discovery into possible changes in the Joint Applicants' plans for Jacobson Park is consistent with these rulings. Based upon our review, we find the Joint Applicants' responses to Requests 16, 17, and 19 to be non-responsive and we direct the Joint Applicants to submit a more complete response.

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18. Please provide the Applicants' estimate of the current market value of Jacobson Park, including all assumptions contained in such an estimate.

19. Please state whether all of the Applicants would accept a condition that they will not sell Jacobson Park to anyone other than the LFUCG during the term of the current lease agreement with the LFUCG, even if KAWC finds a source of water supply sufficient to support a finding that Jacobson Park is no longer used and useful for water supply service. In the event any of the Applicants will not accept such a condition, please state why.

² Case No. 2002-00018, Application for Approval of the Transfer of Control of Kentucky-American Water Company to RWE Aktiengesellschaft and Thames Water Aqua Holdings GmbH (Ky.PSC May 30, 2002).

We deny LFUCG's Motion with respect to Request 18. We fail to see the relevance of the requested information to the current proceeding. The valuation of Jacobson Park does not address any of the principal issues that the Joint Application presents. Moreover, we have previously held that these proceedings should not be used as a vehicle for discovery for other possible proceedings, including those involving the condemnation of private property.

LFUCG also requests that the Commission compel the Joint Applicants' response to Request 20 of its Initial Request for Information.³ This request pertains to expenditures that Kentucky-American Water Company ("KAWC") has made to oppose proposals for LFUCG's acquisition of KAWC's facilities. In support of its request, LFUCG argues that "LFUCG and Kentucky-American's customers are entitled to discover if some of the compensation currently being paid by ratepayers for employees to provide utility service is being spent on the 'anti-government takeover' campaign." LFUCG Motion at 5 - 6. It further argues that this information provides a perspective on "the Applicants' priorities on public interest issues." Id. at 6.

We agree with the Joint Applicants that the requested information is not relevant to this proceeding. While the information would be relevant in a general rate adjustment

³ Request 20 states:

Please provide an accounting for the expenditures incurred to date by any of the Applicants in the campaign against a "Government Takeover" of KAWC, including expenditures supporting the "Coalition Against a Government Takeover", with an explanation of the source of the funds used for such expenditures and the accounting procedures, if any, that will assure that KAWC ratepayers will not be responsible for such expenditures.

proceeding, this proceeding is not a general rate adjustment proceeding.⁴ Should KAWC apply for a general rate adjustment, LFUCG may in any proceeding regarding that application renew its request for this information. Moreover, we find no merit in LFUCG's claim that disclosure of this information will indicate Joint Applicants' priorities on public interest issues. Any potential acquisition by LFUCG of KAWC's facilities represents an extraordinary event. The sums spent in response to such an extraordinary event have a limited value as an indicator of the Joint Applicants' priorities under normal circumstances. Accordingly, we deny LFUCG's Motion as to Request 20.

Having considered LFUCG's Motion to Compel and the Joint Applicants' Response, the Commission HEREBY ORDERS that:

1. LFUCG's Motion to Compel is denied in part and granted in part.
2. No later than 3:30 p.m., Eastern Standard Time, on November 20, 2002, the Joint Applicants shall deliver to the offices of LFUCG's counsel its responses to Requests 16, 17 and 19 of LFUCG's Initial Request for Information. An electronic copy of these responses shall be delivered to all other parties of record and the Commission at the same time, and a paper copy of these responses shall be delivered to all other parties of record and the Commission by November 21, 2002.
3. LFUCG's Motion to Compel responses to Requests 18 and 20 is denied.

⁴ Administrative Regulation 807 KAR 5:016 prohibits the recovery in any general rate-making proceeding of any expenses related to political advertising.

Done at Frankfort, Kentucky, this 19th day of November, 2002.

By the Commission

ATTEST:

Deputy W^m H. Fowler
Executive Director