

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

**In the Matter of:**

<b>THE JOINT PETITION OF KENTUCKY-</b>	)	
<b>AMERICAN WATER COMPANY, THAMES</b>	)	
<b>WATER AQUA HOLDINGS GMBH, RWE</b>	)	
<b>AKTIENGESELLSCHAFT, THAMES WATER</b>	)	
<b>AQUA US HOLDINGS, INC., APOLLO</b>	)	<b>CASE NO.</b>
<b>ACQUISITION COMPANY AND AMERICAN</b>	)	<b>2002-00317</b>
<b>WATER WORKS COMPANY, INC. FOR</b>	)	
<b>APPROVAL OF A CHANGE IN CONTROL OF</b>	)	
<b>KENTUCKY-AMERICAN WATER COMPANY</b>	)	

\* \* \* \* \*  
**REPLY OF JOINT PETITIONERS  
TO ATTORNEY GENERAL'S RESPONSE,  
NOTICE AND REQUEST**

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Joint Petitioners, Kentucky-American Water Company ("Kentucky-American"), Thames Water Aqua Holdings GmbH ("Thames Holdings"), RWE Aktiengesellschaft ("RWE"), Thames Water Aqua US Holdings, Inc. ("TWUS") and American Water Works Company, Inc. ("American"), submit this reply to the Attorney General's Response to Joint Applicants' Notice of Closing in Case No. 2002-00277, the Attorney General's Motion for Restablishment [sic] of Kentucky-American's Pre-Closing Status and the Attorney General's Request for Findings of Fact and Conclusions of Law Regarding the Closing (collectively, the "Attorney General's Motion"). The thrust of the Attorney General's Motion is that he would prefer that the Joint Petitioners had not closed the transaction that was the subject of the Commission's December 20, 2002, Order herein until he and the other Intervenors no longer wanted, or were able, to challenge the Commission's orders relating thereto at the Commission and the courts of

the Commonwealth. Since the Joint Petitioners were legally entitled to close the transaction when they did, the Attorney General's preferences about the course of events should be disregarded and the Attorney General's Motion should be denied.

As described in more detail in the Joint Petitioners' Response to the Notice and Motion Pursuant to KRS 278.020(4) & (5) Filed by Bluegrass FLOW, Inc. (which is incorporated herein by reference), the Commission's December 20, 2002, Order was in full force and effect when the closing occurred and the Joint Petitioners were legally entitled to do what was authorized thereby. If the Attorney General or any of the Intervenors wanted to attempt to prevent the Joint Petitioners from acting in accordance with the Commission's December 20, 2002, Order, they should have sought injunctive relief in the Franklin Circuit Court. The Attorney General chose not to do so and he should not be heard to complain about his failure to act.

Furthermore, given the standards for injunctive relief and to reverse a Commission order, it is unlikely that the Attorney General or any other Intervenor could have obtained an injunction. As the Commission is aware, an essential element of a claim for injunctive relief is a showing that the movant is reasonably likely to succeed on the merits. Maupin v. Stansbury, 575 S.W.2d 695 (Ky. App. 1978). The showing that must be made to reverse a Commission order was set forth by the Supreme Court of Kentucky as follows:

In regard to the orders of the Commission, the obligation of the court is to determine whether the protestants have shown by "clear and satisfactory evidence" from the record that the Commission orders are unlawful or unreasonable. *KRS 278.430*. The orders can be found unreasonable only if it is determined that the evidence presented leaves no room for difference of opinion among reasonable minds. (Citation omitted.)

Kentucky Industrial Utility Customers, Inc. v. Kentucky Utilities Company, 983 S.W.2d 493, 499 (Ky. 1998). It is respectfully suggested that neither the Attorney General nor any other Intervenor could have satisfied the “likelihood of success” prong of the requirements for injunctive relief.

Thus, the Attorney General likely could not have obtained injunctive relief suspending the operation of the Commission’s Order of December 20, 2002; but since he did not even try to do so, he should not be permitted to obtain the relief from this Commission that he did not timely seek in the proper forum.

The Attorney General’s request that Kentucky-American’s pre-closing status should be re-established should be rejected forthwith as a meaningless act. After the closing on January 10, 2003, Kentucky-American was (1) still owned by American just as it was before the closing; (2) was still a utility fully subject to the jurisdiction of this Commission just as it was before the closing; (3) was still subject to the Commission oversight set forth in Chapter 278 of the Kentucky Revised Statutes just as it was before the closing and (4) was still providing high quality water service at reasonable costs just as it was before the closing. In other words, its status vis a` vis its regulation by this Commission has not changed a whit by virtue of the closing.

The Attorney General has requested some findings of fact and conclusions of law. Findings of fact must be supported by evidence and there is no evidence to support the request. The requested findings of fact and conclusions of law should be denied.

Respectfully submitted,

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APOLLO ACQUISITION COMPANY

**CERTIFICATION**

In conformity with paragraph 13 of the Commission's Order dated September 26, 2002, this is to certify that the electronic version of this Reply of Kentucky-American Water Company, Thames Water Aqua Holdings GmbH, RWE Aktiengesellschaft, Thames Water Aqua US Holdings, Inc., and American Water Works Company, Inc. to The Attorney General's Response, Motion and Request is a true and accurate copy of the Reply of Kentucky-American Water Company, Thames Water Aqua Holdings GmbH, RWE Aktiengesellschaft, Thames Water Aqua US Holdings, Inc., and American Water Works Company, Inc. to Attorney General's Response, Motion and Request filed in paper medium; that the Joint Petitioners have notified the Commission and all parties by electronic mail on January 24, 2003 that the electronic version of this Reply of Kentucky-American Water Company, Thames Water Aqua Holdings GmbH, RWE Aktiengesellschaft, Thames Water Aqua US Holdings, Inc., and American Water Works

Company, Inc. to The Attorney General's Response, Motion and Request has been transmitted to the Commission, and that a copy has been served by mail upon:

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and that the original and three copies have been filed with the Public Service Commission in paper medium on the 24<sup>th</sup> day of January, 2003.

*Wendy W. Ingram Jr.*

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