

**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. 2002-00317</b>
<b>ACQUISITION COMPANY AND AMERICAN</b>	)	
<b>WATER WORKS COMPANY, INC. FOR</b>	)	
<b>APPROVAL OF A CHANGE IN CONTROL OF</b>	)	
<b>KENTUCKY-AMERICAN WATER COMPANY</b>	)	

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**RESPONSE TO MOTION OF PUBLIC CITIZEN TO INTERVENE**

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Joint Petitioners, Kentucky-American Water Company, Thames Water Aqua Holdings GmbH, RWE Aktiengesellschaft, Thames Water Aqua US Holdings, Inc., Apollo Acquisition Company and American Water Works Company, Inc., respectfully submit this Response to the Motion of Public Citizen for full intervention in this proceeding.

Intervention in Public Service Commission proceedings is governed by 807 KAR 5:001, Section 3 (8) which, in part, states:

If the Commission determines that a person has a special interest in the proceeding which is not otherwise adequately represented or that full intervention by party (sic) is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complication or disrupting the proceedings, such person shall be granted full intervention.

Public Citizen does not have a special interest in the proceeding. Further, Public Citizen 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, Public Citizen's Motion for full intervention should be denied pursuant to 807 KAR 5:001, § 3(8).

Public Citizen alleges that its "special and unique interest in this proceeding" 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. This proceeding is to determine the appropriateness of the use of an intermediary holding company, Thames Water Aqua US Holdings, Inc., to hold the stock of American Water Works Company, Inc. in connection with the merger that was approved in Case No. 2002-00018. In the May 30, 2002, Order in Case No. 2002-00018, the Commission said,

Bluegrass FLOW and LFUCG assert that any determination of the public interest must consider the possibility of public ownership of the utility facilities and the effort of local governments to acquire such facilities. ... [T]he Commission's focus must be upon the qualifications of the acquiring party and the potential effects of the proposed transfer. We find no legal authority to support Bluegrass FLOW's assertion that the presence of a local government's willingness to acquire a utility's facilities is sufficient basis for the Commission to delay or deny a private entity's application for approval of transfer of control. To the extent that a local government may wish to acquire a public utility's facilities, the Legislature has provided the necessary means for accomplishing such acquisition without any Commission involvement. See KRS 106.220.

Id. at 8. Thus, this Commission has already determined that it is not a sufficient basis to delay or deny approval of a proposed transaction just because an entity committed to public ownership of water facilities may convince a local government to express a willingness to acquire an investor-owned utility's facilities. It has further found that if such an entity wants to advance its alleged "special and unique interest" in this

transaction, it may do so “without any Commission involvement.” In sum, the Commission is not the appropriate forum for Public Citizen to advocate its alleged “special and unique interest” in local ownership of local water facilities. The Commission has recently emphasized this point by pointing out that it found “no evidence currently within the record of this proceeding and nothing within Bluegrass FLOW’s motion to suggest that public ownership of Kentucky-American Water Company facilities is relevant to the current proceeding.”<sup>1</sup>

This Commission has previously denied full intervenor status to an entity, like Public Citizen, whose interest in the proceeding was too remote. See Order of October 15, 1996, In the Matter of: the Application of the Atmos Energy Corporation (Atmos), Through Its Division, Western Kentucky Gas Company of Owensboro, Kentucky, For an Order Authorizing the Creation and Issuance of Additional Shares of Common Stock to Effectuate an Acquisition, By Merger, of United Cities Gas Company By Atmos, Case No. 96-408. There, Southern Union Company, the largest shareholder of United Cities, sought intervention to oppose the approval of the issuance of stock because it was opposed to the merger that was to be effectuated with the stock. Public citizen’s interest in this proceeding is more remote than was Southern Union’s interest in Case No. 96-408.

Finally, Public Citizen states in conclusory fashion, with no supporting facts, that it “is likely to present issues and/or develop facts which will assist the Commission in fully considering the instant matter without unduly complicating or disrupting the proceedings.” Motion to Intervene at 2. That assertion is simply untrue. Its motive in seeking intervention in this proceeding is to complicate and disrupt the proceedings and,

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<sup>1</sup> Order of September 16, 2002, Case No. 2002-00317, page 2.

ultimately, to delay the merger that was approved in Case No. 2002-00018. The intention of its California office is to “[E]xpos[e] how big energy companies use deregulation to manipulate the energy supply and line their pockets. We are fighting to keep multinational corporations from controlling and profiteering from our public water systems, and we are spearheading the fight for a global trade system that respects democratic values and ensures economic justice.”<sup>2</sup>

The specific purposes for the requested intervention are stated in Public Citizen’s press release, attached hereto as Exhibit A. RWE AG, previously declared by this Commission as meeting all of the statutory requirements necessary in the Commonwealth to acquire ownership of a public utility, is described as “a giant German conglomerate,” “a multinational corporation,” “the German company” and “a giant German energy company.” These characterizations are designed to appeal to prejudicial emotions. A similar effort was made by FLOW in Case 2002-00018 and the Commission disposed of the concept.

Bluegrass FLOW suggests that the proposed merger is contrary to the public interest because it places Central Kentucky’s water supply at risk from foreign manipulation. (footnote omitted.) We find no evidence in the record to support such concern. The Commission is troubled by this argument particularly in light of the Commonwealth’s efforts over the last two decades to encourage foreign development and investment in this state. This concern ignores that, while KAWC’s ultimate owners may be citizens of a foreign nation, KAWC will remain subject to the laws of this Commonwealth. *Id.* at 25.

The purpose of this proceeding is to request the approval of the transfer of American Water Works Company, Inc. stock to Thames Water Aqua US Holdings, Inc. as an intermediary holding company owned by Thames Water Aqua Holdings GmbH.

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<sup>2</sup> <http://www.citizen.org/about/>

This Commission in Case No. 2002-00018 has already approved the transfer of the stock to Thames Water Aqua Holdings GmbH. It would clearly be disruptive if Public Citizen attempts to use this proceeding to rehear the issues in Case No. 2002-00018 or advance its own, irrelevant agenda.

The modus operandi of Public Citizen is to advance its agenda with vitriolic rhetoric. The individual who signed the Motion to Intervene in this proceeding provides us with a recent example of this complicating and disruptive approach. She said, at the International Forum on Globalization held on August 25, 2002, in Johannesburg, South Africa:

"It is an honor to be here among you. My spirits are lifted and my energy has been restored by our enthusiasm, your strength and your bravery. No wonder the thief in the White House—who stole this election—George Bush is too cowardly and morally bankrupt to come here. He's too busy cavorting with his corporate criminal friends, raising money for his greedy political cronies and plotting war to come in person. But, no problem, Powell and Rice and all the US' corporate allies are here to represent the corporate elite."<sup>3</sup>

Public Citizen fails to satisfy either prong of the intervention regulation at 807 KAR 5:001, § 3(8). This Commission has already found that it is not the forum in which a similar entity may advance its alleged “special and unique interest” in local ownership of local water facilities. Public Citizen’s web site, press release and style of advocacy demonstrates that its presence as a full intervenor in this case will add nothing but complication and disruption to the proceedings. It has no special interest not otherwise adequately represented as it is not a Kentucky corporation (it is described as “a Washington, DC-incorporated non-profit public interest organization”), does not allege

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<sup>3</sup> [http://www.publiccitizen.org/cmep/Water/cmep\\_Water/wssd/articles.cfm?ID=8204](http://www.publiccitizen.org/cmep/Water/cmep_Water/wssd/articles.cfm?ID=8204)

any connection with Kentucky, and does not allege that it represents any residents of Kentucky or any customers of Kentucky-American Water Company. The Motion to Intervene should be denied.

Respectfully submitted,

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**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 Response is a true and accurate copy of the Response filed in paper medium; that the Joint Petitioners have notified the Commission and all parties by electronic mail on September 18, 2002, that the electronic version of this Response has been transmitted to the Commission, and that a copy has been served by mail upon:

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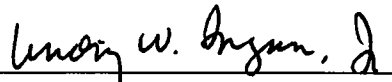
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and that the original and three copies have been filed with the Public Service Commission in paper medium on the 18th day of September, 2002.



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Counsel for Kentucky-American Water Company  
and American Water Works Company, Inc.

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## Public Citizen Files Motion to Intervene in Lexington Water Case

### *Public Ownership Would Better Serve Lexington Community, Groups Say*

WASHINGTON, D.C. - Public Citizen, a national consumer advocacy organization, today filed a motion to intervene in proceedings by the Kentucky Public Service Commission (PSC) on the future of Lexington's water system. If granted, the motion would allow Public Citizen to speak before the PSC in a case prompted by the acquisition of the company that currently operates Lexington's water system by a giant German energy conglomerate.

The motion is the latest move in an ongoing battle by citizen groups, including Bluegrass FLOW, to persuade the Lexington-Fayette Urban County Government to gain control of the city's water system. Both public interest groups advocate that a municipal buyout of the privately owned company, Kentucky-American, would stabilize rates and provide more reliable service. The county is considering pursuing a buyout.

"Cities across America are reclaiming their water systems because they are fed up with broken promises from corporations who report to their shareholders instead of to their customers," said Wenonah Hauter, director of Public Citizen's Critical Mass Energy and Environment Program. "When you treat water as a common resource for all, as it should be, public ownership makes sense. The citizens of Lexington will benefit from owning their water system, and we support their efforts."

The county's decision to investigate a public buyout stems from concerns that began in 2001 when American Water Works Company, the largest U.S. water company and the parent of Kentucky-American, agreed to be purchased by RWE AG, a German energy conglomerate. Uncomfortable with a multinational corporation owning their local waterworks, citizens began to ask if profits made in Lexington would be re-invested into their community or if the revenues would be used for the German company's overseas expansion efforts. RWE has also acquired Thames Water, a large private water company in England. Under the conditions of the acquisition, executives of American Water Works would report to Thames officials in England.

The PSC is reviewing the deal because it oversees utilities. The PSC review is what prompted the county to consider a buyout.

"Lexington has a rare opportunity to reclaim control of its water service and build its future on its own terms, not those dictated from the distant headquarters of a giant German energy company," said Hauter. "Who wouldn't vote for lower rates, better service and economic development in their own city?"

While Kentucky-American has argued that the city would have to significantly increase water rates to pay for the purchase, proponents assert that the county government can finance the purchase by issuing tax-exempt revenue bonds to be paid solely from water revenues and therefore could afford the buyout without raising prices.

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**EXHIBIT A**