

KENTUCKY-AMERICAN WATER COMPANY  
THAMES WATER AQUA HOLDINGS GMBH  
RWE AKTIENGESELLSCHAFT  
THAMES WATER AQUA US HOLDINGS, INC.  
APOLLO ACQUISITION COMPANY  
AMERICAN WATER WORKS COMPANY, INC.

CASE NO. 2002-00317

RESPONSES TO LFUCG'S SUPPLEMENTAL REQUESTS  
FOR INFORMATION DATED OCTOBER 7, 2002

ITEM NO. 1

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**Witness:**

1. Reference No. 1(b) – the answer is not responsive. Please provide the name of any agent for the service of process within the Commonwealth of Kentucky for each of the Applicants. If none, so state.
  - A. For each Applicant that does not currently have an agent for service of process within the Commonwealth of Kentucky state whether that Applicant would agree to so designate such an agent as a condition of the approval of this application. If any Applicant would not so agree, please state why not.

**RESPONSE:**

1. Kentucky-American and American have appointed agents for service of process who are located in Kentucky. The other Joint Petitioners have not done so, but if their conduct causes them to be subject to the personal jurisdiction of the courts of Kentucky, then the Secretary of State of the Commonwealth of Kentucky is deemed their agent for service of process. See KRS 454.210.
  - A. No. It is unnecessary. See the Response to Item No. 1 above.

KENTUCKY-AMERICAN WATER COMPANY  
THAMES WATER AQUA HOLDINGS GMBH  
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APOLLO ACQUISITION COMPANY  
AMERICAN WATER WORKS COMPANY, INC.

CASE NO. 2002-00317

RESPONSES TO LFUCG'S SUPPLEMENTAL REQUESTS  
FOR INFORMATION DATED OCTOBER 7, 2002

ITEM NO. 2

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**Witnesses: James McGivern and Daniel Kelleher**

2. Reference No. 1(c) – the answer is not responsive, as mere recitation of unspecified procedures is not a sufficient response. Please answer the question as posed.

**RESPONSE:**

2. Joint Petitioners believe that their response to Item No. 1(c) of LFUCG's Initial Requests is responsive. Joint Petitioners suggest that the discovery process is not the proper place to argue hypothetical legal issues.

KENTUCKY-AMERICAN WATER COMPANY  
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THAMES WATER AQUA US HOLDINGS, INC.  
APOLLO ACQUISITION COMPANY  
AMERICAN WATER WORKS COMPANY, INC.

CASE NO. 2002-00317

RESPONSES TO LFUCG'S SUPPLEMENTAL REQUESTS  
FOR INFORMATION DATED OCTOBER 7, 2002

ITEM NO. 3

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**Witnesses: James McGivern and Daniel Kelleher**

3. Reference No. 1(d) – the answer is not responsive. Mere citation of a statutory section and unidentified case law does not constitute an explanation of why the Applicants are not required to register to do business in the Commonwealth. Please answer the question as posed.

**RESPONSE:**

3. Joint Petitioners believe that their Response to Item 1(d) of LFUCG's Initial Request is responsive and needs no further explanation.

KENTUCKY-AMERICAN WATER COMPANY  
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APOLLO ACQUISITION COMPANY  
AMERICAN WATER WORKS COMPANY, INC.

CASE NO. 2002-00317

RESPONSES TO LFUCG'S SUPPLEMENTAL REQUESTS  
FOR INFORMATION DATED OCTOBER 7, 2002

ITEM NO. 4

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**Witnesses: James McGivern, Roy W. Mundy II and Daniel Kelleher**

4. Reference No. 2. The Commission has recently issued orders in a number of cases involving municipal utilities requiring that such utilities have specific authorization from the governing body of the municipality to file an application with this Commission. In particular, refer to In re: City of Pikeville, PSC Case No. 2000-540, Order of October 8, 2001. Please explain all reasons, if any, why municipal utility applications without such authorization are void, while applications from private utilities may be accepted without such authorizations from their governing bodies.

**RESPONSE:**

4. Joint Petitioners have not suggested that applications may be accepted from private utilities without authorizations from their governing bodies. The Response to Item No. 2 of LFUCG's Initial Requests was based on the fact that corporate officers are granted sufficient authority by applicable corporate statutes, articles of incorporation and by-laws to file applications with regulatory bodies.

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AMERICAN WATER WORKS COMPANY, INC.

CASE NO. 2002-00317

RESPONSES TO LFUCG'S SUPPLEMENTAL REQUESTS  
FOR INFORMATION DATED OCTOBER 7, 2002

ITEM NO. 5

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**Witness: Daniel Kelleher**

5. Reference No. 5. Please state whether tax savings realized as a result of the filing of a consolidated tax return will be included in merger savings to be reported to the Commission in PSC Case No. 2002-00277. If not, explain.

**RESPONSE:**

5. Kentucky-American will continue to be treated on a stand alone basis for taxes. Accordingly, any theoretical tax saving (e.g., growing out of losses experienced by another of TWUS' subsidiary's having losses) would not impact Kentucky-American. Conversely, should Kentucky-American have a loss in one year, since it is treated on a stand alone basis, that tax loss would be preserved as an offset against the future taxes of Kentucky-American. Accordingly, we do not believe that tax consolidation should be reportable as merger savings in the referenced case.

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APOLLO ACQUISITION COMPANY  
AMERICAN WATER WORKS COMPANY, INC.

CASE NO. 2002-00317

RESPONSES TO LFUCG'S SUPPLEMENTAL REQUESTS  
FOR INFORMATION DATED OCTOBER 7, 2002

ITEM NO. 6

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**Witness: James McGivern**

6. Reference No.'s 7 and 15. Please define the terms "housekeeping modification" and "corporate housekeeping type matters" as used in the responses to the referenced questions. In particular, provide any policy that has been adopted by any Applicant that provides guidance as to how such terms are to be defined and applied in corporate reorganizations or the creation of new subsidiaries.

**RESPONSE:**

6. In the response to LFUCG's No.'s 7 and 15, the word "housekeeping" was used to indicate non-substantive corporate changes that would not impact the ability of the Commission to regulate Kentucky-American, nor in any way impact on Kentucky-American's customers, and that would not change the basic concept of this transaction (i.e., that RWE, acting through subsidiaries would own AWW and AWW would continue to own Kentucky-American.) With respect to the second portion of this question, the Applicants have not developed such a policy.

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RWE AKTIENGESELLSCHAFT  
THAMES WATER AQUA US HOLDINGS, INC.  
APOLLO ACQUISITION COMPANY  
AMERICAN WATER WORKS COMPANY, INC.

CASE NO. 2002-00317

RESPONSES TO LFUCG'S SUPPLEMENTAL REQUESTS  
FOR INFORMATION DATED OCTOBER 7, 2002

ITEM NO. 7

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**Witness: James McGivern**

7. Please explain how the Commission or the intervenors will be able to determine whether future reorganizations are in fact "housekeeping matters" absent a change of control filing.

**RESPONSE:**

7. See the Response to Item No. 6 above.

KENTUCKY-AMERICAN WATER COMPANY  
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RWE AKTIENGESELLSCHAFT  
THAMES WATER AQUA US HOLDINGS, INC.  
APOLLO ACQUISITION COMPANY  
AMERICAN WATER WORKS COMPANY, INC.

CASE NO. 2002-00317

RESPONSES TO LFUCG'S SUPPLEMENTAL REQUESTS  
FOR INFORMATION DATED OCTOBER 7, 2002

ITEM NO. 8

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**Witness: James McGivern**

8. Reference No. 12. Please state whether the Applicants would agree to prohibit Thames Water Aqua U.S. Holdings, Inc. ("TWUS") from becoming involved in the operational control of American Water Works Company, Inc. ("AWW") or Kentucky-American Water Company ("KAWC") without the specific approval of the Commission as a condition of the approval of this application. If not, explain.

**RESPONSE:**

8. Yes, we would agree.



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RWE AKTIENGESELLSCHAFT  
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APOLLO ACQUISITION COMPANY  
AMERICAN WATER WORKS COMPANY, INC.

CASE NO. 2002-00317

RESPONSES TO LFUCG'S SUPPLEMENTAL REQUESTS  
FOR INFORMATION DATED OCTOBER 7, 2002

ITEM NO. 9

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**Witness:**

9. Reference No. 13. Please provide additional information with respect to the 1998 fine imposed on Consol Energy by the Ohio EPA for "Water treatment facility failure". In particular, provide any order or findings of the Ohio EPA that were issued with respect to such fine. In the event that such documents do not exist, provide a narrative explanation of the circumstances of such fine.

**RESPONSE:**

9. The information sought in this request has no relevance to the subject matter of this proceeding; nevertheless, please see the attached documents in paper medium.

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RWE AKTIENGESELLSCHAFT  
THAMES WATER AQUA US HOLDINGS, INC.  
APOLLO ACQUISITION COMPANY  
AMERICAN WATER WORKS COMPANY, INC.

CASE NO. 2002-00317

RESPONSES TO LFUCG'S SUPPLEMENTAL REQUESTS  
FOR INFORMATION DATED OCTOBER 7, 2002

ITEM NO. 10

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**Witness: James McGivern**

10. Reference No. 14. In response to this interrogatory, the Applicants provided a copy of an analysis by Goldman Sachs (the merger advisor for AWW) of German utilities. At page 5 of that analysis, Goldman Sachs concludes that RWE has overpaid for assets in the past, and lists various acquisitions for which RWE has overpaid. Please state whether the Applicants agree with this analysis, and if not, please state the value which the Applicants place on the acquired companies, and why that valuation differs from that of Goldman Sachs.

**RESPONSE:**

10. The strategy of RWE was to buy high quality companies with a relevant market position. The price paid by RWE for its past acquisitions represents value added to RWE.

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RWE AKTIENGESELLSCHAFT  
THAMES WATER AQUA US HOLDINGS, INC.  
APOLLO ACQUISITION COMPANY  
AMERICAN WATER WORKS COMPANY, INC.

CASE NO. 2002-00317

RESPONSES TO LFUCG'S SUPPLEMENTAL REQUESTS  
FOR INFORMATION DATED OCTOBER 7, 2002

ITEM NO. 11

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**Witness:**

11. Reference No.'s. 16 through 19. The answer provided to these requests is not responsive. The LFUCG is not precluded from this line of questioning. Please answer the questions as posed.

**RESPONSE:**

11. As indicated in the Response to Item No. 14 of Bluegrass FLOW, Inc.'s First Interim Request for Information, the subject of Jacobson Park was fully examined (to the extent it was pertinent) in Case No. 2002-00018. The examination of TWUS in this case does not require further inquiry into Jacobson Park. In fact, it appears that LFUCG is attempting to use this proceeding to gather information relating to issues those in favor of condemnation of Kentucky-American believe may be useful in their efforts. That is not an appropriate use of this proceeding.

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RWE AKTIENGESELLSCHAFT  
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APOLLO ACQUISITION COMPANY  
AMERICAN WATER WORKS COMPANY, INC.

CASE NO. 2002-00317

RESPONSES TO LFUCG'S SUPPLEMENTAL REQUESTS  
FOR INFORMATION DATED OCTOBER 7, 2002

ITEM NO. 12

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**Witness:**

12. Reference No. 20. The answer is not responsive. Please answer the question as posed.

**RESPONSE:**

12. The Response to Item No. 20 of LFUCG's First Requests was, in fact, responsive. The Commission has unequivocally stated that the Commission is not the proper forum to argue issues pertaining to a possible condemnation of Kentucky-American. This proceeding is also not the proper place to investigate possible future rate treatment of expenditures that Kentucky-American has stated will not be borne by ratepayers.

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APOLLO ACQUISITION COMPANY  
AMERICAN WATER WORKS COMPANY, INC.

CASE NO. 2002-00317

RESPONSES TO LFUCG'S SUPPLEMENTAL REQUESTS  
FOR INFORMATION DATED OCTOBER 7, 2002

ITEM NO. 13

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**Witness:**

13. Reference No. 22. Please state whether the Applicants will agree to a condition that they will waive any and all of the defenses referenced in the original question with respect to future actions or proceedings before the Commission. If not, explain.

**RESPONSE:**

13. No. It is not reasonable to request a waiver of unidentified "treaties, laws, international agreements or related items" in connection with hypothetical future proceedings.

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RWE AKTIENGESELLSCHAFT  
THAMES WATER AQUA US HOLDINGS, INC.  
APOLLO ACQUISITION COMPANY  
AMERICAN WATER WORKS COMPANY, INC.

CASE NO. 2002-00317

RESPONSES TO LFUCG'S SUPPLEMENTAL REQUESTS  
FOR INFORMATION DATED OCTOBER 7, 2002

ITEM NO. 14

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**Witness: James McGivern**

14. Reference No. 26. Please state whether AWW will be broken out for reporting as a separate entity in any of the filings referenced by the Applicants in the response to the original question. If so, please state in which reports, and for what purposes.

**RESPONSE:**

14. These reports are, in general, prepared on a consolidated basis. Accordingly, for the most part AWW will only be reported on as part of the aggregate for RWE's water operations.

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AMERICAN WATER WORKS COMPANY, INC.

CASE NO. 2002-00317

RESPONSES TO LFUCG'S SUPPLEMENTAL REQUESTS  
FOR INFORMATION DATED OCTOBER 7, 2002

ITEM NO. 15

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**Witness: James McGivern**

15. Reference No. 28. Please state whether the Applicants will accept a condition that TWUS's Board of Director's will be the same as AWW's post-transaction Board of Directors.

**RESPONSE:**

15. Yes.

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THAMES WATER AQUA HOLDINGS GMBH  
RWE AKTIENGESELLSCHAFT  
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APOLLO ACQUISITION COMPANY  
AMERICAN WATER WORKS COMPANY, INC.

CASE NO. 2002-00317

RESPONSES TO LFUCG'S SUPPLEMENTAL REQUESTS  
FOR INFORMATION DATED OCTOBER 7, 2002

ITEM NO. 16

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**Witness: James McGivern**

16. Reference No 29. Please state whether the Applicants will accept a condition that TWUS will be prevented from engaging in any commercial transactions with AWW or KAWC.

**RESPONSE:**

16. With the understanding that the commercial transactions that are to be precluded are limited to the exchange of goods and services and that such preclusion would not limit financial transactions (e.g., the payment of dividends, the filing of a consolidated tax return), the Applicants would accept such a condition.



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APOLLO ACQUISITION COMPANY  
AMERICAN WATER WORKS COMPANY, INC.

CASE NO. 2002-00317

RESPONSES TO LFUCG'S SUPPLEMENTAL REQUESTS  
FOR INFORMATION DATED OCTOBER 7, 2002

ITEM NO. 17

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**Witness: James McGivern**

17. Reference Response to Commission Staff's First Request, Item No. 9. At page 2 of the Response, there is a reference to a "large wastewater fine of 2/21/2000". However, this item does not appear to be listed with other environmental actions on the following pages. Please provide the information as provided for other events, in the same format. In addition, please provide a copy of any reports or findings issued by regulators or government officials in connection with this event, as well as copies of any documents filed by "the London Utility" in connection with this event.

**RESPONSE:**

17. The information in question appears on page 9 of the attachment to our response to Staff's Item No. 9. The confusion was caused by the fact that in the United Kingdom, where the attachment was prepared, dates are shown day first and month second (i.e., 21/2), while in our answer, we referred to the date using US format (i.e., 2/21). We have no documents responsive to the third sentence in this request.