

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

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**RESPONSE OF JOINT PETITIONERS
TO BLUEGRASS FLOW’S MOTION FOR ENLARGEMENT OF TIME**

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”), Apollo Acquisition Company (“Apollo”) and American Water Works Company, Inc. (“American”), object to Bluegrass FLOW’s Motion for an Enlargement of Time.

First, FLOW asserts that it has not had a full opportunity to present a witness in this or the prior proceeding, Case No. 2002-00018. It claims that it had only four days after the Commission’s order granting it intervention to submit its testimony in Case 2002-00018. While true, that argument fails to address FLOW’s delay in intervening and availing itself of the time and opportunity that all other intervenors had. The delay in intervening in the prior case was entirely in the hands of FLOW. It should not be granted special dispensation in this matter when the alleged prejudice in a previous matter is solely of its own doing.

Next, FLOW claims that testimony in this proceeding is due thirty two days from the filing of the application. However, FLOW was well aware, as were the other intervenors, of the intention of the Joint Petitioners to seek Commission approval of the formation of the intermediary holding company, Thames Water Aqua US Holdings, Inc. The allegations in the petition were fully disclosed in a conference with all parties prior to the filing of the Joint Petition. Furthermore, the schedule followed by the Commission in this case is comparable to that followed in similar merger cases.

All parties have been on notice from the outset of this case of the time schedule and of the filing dates. FLOW has had the same opportunity as all other parties to prepare. There is no reason to give FLOW special consideration, when all other parties have adhered to the Commission's schedule.

Apparently, FLOW has testimony prepared, but some of it "falls outside the scope of hearing under the terms of the October 16th Order." Assuming that the testimony was prepared accordingly, it should be an easy matter for FLOW to simply expunge the offending portions of its testimony. No new issues were thrust upon the parties as a result of the October 16th Order, therefore, those portions of FLOW's testimony relevant to the TWUS matter can be filed.

Finally, FLOW claims that it is pursuing issues such as foreign investment and ownership of TWUS and matters related to certain laws and treaties. Those issues appear to be outside the scope of this proceeding and the scope of the Commission's jurisdiction. The effect of treaties or foreign ownership on the status of TWUS as an intermediary holding company in this transaction is not before this Commission and does not fall within the criteria of KRS 278.020(4) and (5).

A delay of thirty days will result in nothing substantive being presented to the Commission. The present schedule will not prevent any party from fully examining the relevant issues. For these reasons, the Motion should be denied.

Respectfully submitted,

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CERTIFICATION

In conformity with paragraph 13 of the Commission's Order dated September 16, 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 October 21, 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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and that the original and three copies have been filed with the Public Service Commission in paper medium on the 21st day of October, 2002.

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