

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

IN THE MATTER OF:

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

**LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT’S RESPONSE TO NOTICE**

Comes now the Lexington–Fayette Urban County Government (the “LFUCG”), by counsel, and files this Response to the Joint Petitioner’s January 13, 2003 Notice informing the Commission that the transaction in the Agreement and Plan of Merger of September 16, 2001, occurred on January 10, 2003.

The Joint Petitioners have closed the merger while an application by the parties to the merger agreement for the change of control of Kentucky-American Water Company is still pending before this Commission. While the Joint Petitioners have downplayed this case as merely a “housekeeping” matter, Kentucky law makes no such distinction. Statutory law requires **prior authorization** for a change of control, and without such prior authorization, such a change of control is **void and of no effect**. See KRS 278.020(5). Therefore, the change of control (at

least of Kentucky-American Water Company) contemplated by the closing of the merger appears to be void.¹

The LFUCG is also concerned by the closing because the Joint Petitioners, RWE AG and Thames Water Aqua Holdings GmbH, have agreed to take the lead in enhancing Kentucky-American's relationship with the Commission, state and local governments, and other community interests. See Condition No. 17, in both Case No. 2002-00018 and Case No. 2002-00317. Despite this pledge, the Joint Petitioners have decided to close the merger when, by statute, the Commission has until January 29, 2003, to rule on the pending Petitions for Rehearing. See KRS 278.400. This fact should be considered and given appropriate weight by this Commission in its consideration of whether the proposed transaction is consistent with the public interest.

Respectfully submitted,

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

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¹ Furthermore, there appears to be no provision in Kentucky law for curing such a void transfer retroactively.

NOTICE AND CERTIFICATION

Counsel gives notice the original and three copies of the foregoing document have been filed by United States Mail, first class postage prepaid to Thomas M. Dorman, Executive Director, Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602-0615, and by uploading the filing to the file transfer protocol site designated by the Executive Director. The undersigned counsel hereby certifies that the electronic version is a true and accurate copy of the documents filed in paper, the electronic version has been transferred to the Commission, and the Commission and other parties have been notified by electronic mail that the electronic version has been transmitted to the Commission. Undersigned counsel also certifies that a copy of the foregoing was served by first class U.S. Mail delivery, postage prepaid, on the following, all on this the 17th day of January 2003:

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