

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 COMPANY, INC.,)
FOR APPROVAL OF A CHANGE IN)
CONTROL OF KENTUCKY-AMERICAN)
WATER COMPANY)

**MOTION TO RESCIND PROCEDURAL SCHEDULE
PENDING DETERMINATION OF SCOPE OF PROCEEDING;
OR, IN THE ALTERNATIVE, FOR AN EXTENSION OF TIME IN WHICH
TO SERVE REQUESTS FOR INFORMATION**

Comes now the Lexington Fayette Urban County Government (the “LFUCG”), by counsel, and moves the Commission to rescind the procedural schedule for this case issued on September 16, 2002, or, in the alternative, to extend the period of time the intervenors have to serve interrogatories and requests for production. The procedural schedule should not be established until the Commission determines whether this proceeding is even properly before it, and if so, determines the scope of the proceeding.

On September 18, 2002, the various parties filed memoranda concerning the scope of the proceeding. The filings differ drastically in their view of the scope of this proceeding. The Commission will have to determine whether it even has jurisdiction to provide the relief sought by the Applicants.¹ Even if it does, the Commission will have to

¹ Both the LFUCG and Bluegrass FLOW, Inc., have filed Motions to Dismiss this proceeding.

determine whether the proceeding is to be a summary modification of an order, or a full investigation of a proposed change of control.

The Order issued on September 16, 2002, is based on an apparent assumption that all parties agreed that this proceeding should be concluded within 60 days. This assumption, contained in a staff memorandum, has been corrected by the responses of all three intervenors to this proceeding, who pointed out that they were informed that the Commission intended to have this case done in 60 days, and wanted to see if it could be done. None of the intervenors has agreed that this is an appropriate time frame.

Intervenors will have three working days from the filing of the limited testimony by the Applicants to propound and serve interrogatories and requests for production. This is unreasonable and unnecessary, particularly since the intervenors do not yet know whether the Commission will allow them to explore all of the issues in a change of control proceeding.

Until the Commission determines the scope of this proceeding, it is unreasonable to develop a compressed procedural time schedule merely to meet the Applicants' desire to have a summary proceeding. The statute which governs such proceedings allows 120 days, if necessary, to resolve such proceedings, and there is no need to establish a schedule which mandates that the parties must begin to practice the case before they even know what the basic scope of the proceeding will be.

WHEREFORE, the Lexington-Fayette Urban County Government respectfully requests that the September 16, 2002 procedural schedule be rescinded, or, in the alternative, that it be provided a reasonable extension of time within which to serve its discovery on the Joint Petitioners.

Respectfully submitted,

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

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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 motion was served by first class U.S. Mail delivery, postage prepaid, on the following, all on this the 20th day of September 2002:

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