

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

**IN THE MATTER OF:**

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

**LEXINGTON-FAYETTE URBAN  
COUNTY GOVERNMENT’S BRIEF**

Comes now the Lexington-Fayette Urban County Government (the “LFUCG”), by counsel, and submits the following Brief on the application in this action.

I. Procedural History

On September 11, 2002, the Joint Petitioners initiated this proceeding by filing a document entitled Petition and Motion to Modify Order (the “Petition”), which attempted to modify the Commission’s Orders of May 30, 2002 and July 10, 2002 entered in Case No. 2002-00018 (the “Orders”).<sup>1</sup> The Orders have at all times relevant to this action been pending judicial review before the Franklin Circuit Court in Case No. 02-CI-1012 (the “Appeal”).

The Orders conditionally approved the transfer of ownership of Kentucky-American Water Company (“Kentucky-American”) as a result of the proposed merger of American Water

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<sup>1</sup> The Petition was originally filed on August 28, 2002, but due to filing deficiencies, was not accepted by the Commission for filing until September 11, 2002.

Works Company (“AWW”), Kentucky-American’s parent company; and Apollo Acquisition Company (“Apollo”), a wholly owned subsidiary of Thames Water Aqua Holdings GmbH (“Thames”)(this transfer shall hereinafter be referred to as the “Merger”). Thames is a wholly owned subsidiary of RWE Aktiengesellschaft (“RWE”). Kentucky-American and Thames were the only Applicants in Case No. 2002-00018. The Joint Petitioners in this action are Kentucky-American, Thames, RWE, Apollo, AWW and a newly formed subsidiary of RWE, Thames Water Aqua US Holdings, Inc. (“TWUS”), a Delaware corporation.

The Petition was filed because “Thames Holdings and RWE modified the nature of the proposed transfer of control.” See Commission’s Order of October 16, 2002, at page 3. They did so by announcing the intention of RWE to transfer all of the stock of Apollo to TWUS. This transfer will result in TWUS acquiring control over AWW and Kentucky-American upon the consummation of the merger.

The Commission has previously determined that the Petition constitutes a new application for change of control, and has determined that the scope of this proceeding is limited to reviewing TWUS’s qualifications, determining whether transferring the control of Kentucky-American to TWUS is consistent with the public interest, and determining whether any change in circumstances since the issuance of the May 30, 2002 Order in Case No. 2002-00018 requires reconsideration of the findings contained in that Order. See Order of October 30, 2002 at pp 4-5.<sup>2</sup>

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<sup>2</sup> The LFUCG has previously stated its objections to a proceeding to modify an appealed order and to the limitations on the scope of this proceeding, and will not repeat those objections here. Nothing in this or any other filing by or action of the LFUCG should be construed as a waiver of those objections.

## II. TWUS Issues

The stated purpose of the application is to take advantage of a change in German tax law to allow the filing of a U. S. consolidated tax return. See Smith, prefiled testimony at page 2. The creation of TWUS, and its eventual ownership of AWW, is alleged to have no impact whatsoever on Kentucky-American, other than its inclusion in the filing of a consolidated tax return. See Id.

The Commission has previously enunciated its view of the standard of proof to be applied in determining whether a transfer of control is consistent with the public interest:

[A]ny party seeking approval of a transfer of control must show that the proposed transfer will not adversely affect the existing level of utility service or rates or that any potentially adverse effects can be avoided through the Commission's imposition of reasonable conditions on the acquiring party. **The acquiring party should also demonstrate that the proposed transfer is likely to benefit the public through improved service quality, enhanced service reliability, the availability of additional services, lower rates, or a reduction in utility expenses to provide present services.** Such benefits, however, need not be immediate or readily quantifiable [emphasis added].

(See May 30, 2002 Order, at pages 7-8; July 10, 2002 Order at page 9); and has further noted that it was not adopting a mere "no harm" standard, as other states have done. See Order of July 10, 2002, at page 10.

The application of the foregoing standard requires a finding that the application is not consistent with the public interest. Even viewing the facts presented in this proceeding in the best possible light for the Joint Petitioners, the application does not present even the possibility of any benefit to the public, quantifiable or non-quantifiable, as a result of this transaction. The Joint

Petitioners have clearly stated that in their view the transaction will not have tangible or intangible benefit to Kentucky-American, its ratepayers, or the community. Given that the Commission has specifically rejected the “no harm” standard in the Orders (and that those Orders are currently under the jurisdiction of the Franklin Circuit Court), the application does not even theoretically meet the Commission’s public interest standard, and must be rejected pursuant to KRS 278.020(5). Therefore, unless and until the Joint Petitioners propose benefits sufficient to meet the Commission’s public interest standard, there is no basis for approval of this application.

### III. Changes in Circumstances

The Commission has allowed limited inquiry in this proceeding into changes of circumstances that have occurred since May 30, 2002, to determine whether reconsideration of the findings from the Orders is appropriate. Several such changes are evident from the record.

The following issues regarding RWE and its current financial condition, some of which shall be discussed in greater detail infra, were raised at a conference call for analysts conducted on November 13, 2002 (the “Conference Call”)<sup>3</sup>:

1. RWE announced an unexpected \$230 million writeoff of 230 million euros in its Hochtief subsidiary. (See November 13, 2002, RWE conference call beginning at 23:50);
2. Goodwill on Innogy, a British power company acquired recently by RWE, increased from 6.5 billion euros estimated at acquisition to 7.8 billion euros. (Id. beginning at 24:38);
3. The downturn in financial markets reduced the book value of RWE’s securities by 550 million euros. (Id. beginning at 30:10);

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<sup>3</sup> This is available in its entirety on the RWE web site, [www.rwe.com](http://www.rwe.com). In addition, the web site provides a link for the exhibits related to the conference call in .pdf format.

4. RWE's gross financial debt has risen from 11.1 billion euros to 30.4 billion euros in the first three quarters of 2002. (Id. beginning at 30:36);

5. RWE's net debt position has risen from 1.1 billion euros to 15.4 billion euros in the first three quarters of 2002. (Id. beginning at 31:00);

6. The new Green government has proposed general tax law changes that would, among other things, limit the deductibility of interest expense for foreign acquisitions. (Id. beginning at 43:00);

7. Financial analysts are questioning whether a writedown of AWW will occur. (Id. beginning at 45:30);

8. RWE's environmental services division's earnings will be down by 30% by the end of 2002. (Id. beginning at 1:06:00);

9. RWE expects a change in accounting practice to be imposed which will likely result in impairment treatment for goodwill rather than the current goodwill amortization option. (Id. beginning at 1:08:54); and

10. RWE's acquisition expectation of a 10% growth in EBITDA for AWW cannot be fulfilled in the short term. (Id. beginning at 1:12:15).

The changes in condition mentioned in the Conference Call are significant, as are others. First, a report from Goldman Sachs Global Equity Research dated August 21, 2002, at page 5 (introduced at the hearing as LFUCG Cross-Examination Exhibit No. 1) discusses value adjustments for RWE's newly acquired businesses. This analysis shows that in Goldman Sachs opinion, RWE has "overpaid for assets in the past" -- to the tune of several billion dollars -- even excluding any adjustment for the AWW acquisition.

Second, AWW is not even beginning to meet its targeted growth of 10% per annum in EBITDA. (This target is found in the Response to Commission Order of January 30, 2002, in Case No. 2002-00018, Question No. 22, at page 7 of 15). Earnings for AWW for the third quarter of 2002 are actually below the earnings for the same period in 2001, as shown on LFUCG Cross-Examination Exhibit No. 3. In the Conference Call, RWE Chief Financial officer Klaus Sturany agreed (in response to a question on this issue from a financial analyst) that this EBITDA growth expectation would not be fulfilled in the short term. See November 13, 2002, RWE conference call beginning at 1:10:58; response beginning at 1:12:15. While Mr. McGivern speculated that this downturn at AWW will be short-lived, and was based entirely on drought conditions (Hearing of November 21, 2002, video record, responses beginning at 2:03:00 and 2:09:50); AWW has reported that in addition, industrial sales are continuing on a downward trend, due to “continued weakness in the general economy.” LFUCG Cross – Examination Exhibit No. 3, page 1 of 3. Current financial results do not appear to provide significant support for the EBITDA growth expectations that were factored into the merger.

Third, financial analysts have been publicly questioning whether additional writedowns of goodwill will occur for AWW. This issue was raised in questions directed to Mr. Sturany at the Conference Call. See November 13, 2002, RWE conference call, beginning at 45:30:00, response beginning at 47:55:00. Although Mr. Sturany acknowledged the “disappointing” current year financial results at AWW, he denied that a goodwill writeoff would be necessary for AWW. However, brokerage Delta Lloyd Securities was quoted by Dow Jones Newswires as saying that “Impairment of (American Water Works value) will be a topic next year”. LFUCG Cross-Examination Exhibit No. 2.

Fourth, while the Commission noted its belief in Case No. 2002-00018 that RWE would be able to supply AWW with lower cost capital than AWW could secure on its own, a Standard and Poor's Credit Week report dated October 9, 2002, and introduced at the hearing as LFUCG Cross- Examination Exhibit No. 4, stated that the average European continental utility rating of high "A" to low "AA" is "unlikely to continue as competitive pressures come to bear on these companies." Furthermore, Kentucky-American is currently owned by an entity that operates entirely within the United States, and almost entirely in the provision of regulated water service. Additional new concerns with this transfer include those described by Standard and Poor's in its October 9, 2002 article (See LFUCG Cross – Examination Exhibit No. 4, entitled "European Utility Ratings Continue on Downward Trend"): "General European utility industry trends of competition, deregulation of competitive markets, network regulatory tightening, and higher debt leverage all suggest weaker rather than stronger credit profiles."

Fifth, at the Conference Call, Mr. Sturany discussed proposed German tax law changes that presumably will have a further negative impact on RWE's financial results. Included in these changes would be a restriction on the writeoff of interest expense for foreign acquisitions. See November 13, 2002, RWE conference call, beginning at 43:00.

While the impact of these proposed changes has not been quantified, the net effect would seem to be: (i) increased difficulty for RWE in recovering the premium it is paying for AWW; (ii) an increased possibility that RWE may not be able to acquire all of the lower cost capital which it (and the Commission) has assumed will be available for AWW; and (iii) a demonstration that a whole new range of factors, including further foreign law and tax changes, multinational financial conditions, and problems arising from other acquisitions and lines of

business -- such as RWE's troubled Environmental Services Division -- may have an impact on AWW if it is acquired by RWE. The fact that all of these concerns have arisen in such a short period of time is an indication of how quickly well-intentioned desires can be frustrated by changing conditions.

Finally, on an issue related to change in circumstances, at the November 21, 2002 hearing, Mr. McGivern was questioned as to whether the Joint Petitioners were willing to commit to a condition that would prohibit them from asserting any defenses which might currently exist, or which might arise in the future, as a result of treaties and trade agreements. Mr. McGivern demurred and indicated that the Joint Petitioners could not commit to a condition that was so vague. However, the Commission and the intervenors are being asked to commit to a future that includes at least the following unknowns:

1. The long-term success or failure of the "multi-utility" concept as an organizational model;
2. The future of the European capital markets in general, and the expanding multinational utility's relationship to such markets in particular;
3. The ability of the Joint Petitioners to achieve highly optimistic growth targets, primarily through acquisitions and unregulated activities, in a market (the United States) in which they have, at best, limited experience;
4. Uncertainty as to whether future trade agreements and treaties, or modifications to current agreements, will have an impact on the jurisdiction and powers of both the Commission, and state and local governments;



5. Uncertainty as to whether future reorganizations (perhaps in response to future law changes in other countries), which may be exempt from Commission review under KRS 278.020(6), will involve more than “housekeeping” changes;<sup>4</sup>

6. Uncertainty as to precisely how entities such as RWE and Thames will be brought under the jurisdiction of the courts should enforcement actions be necessary, especially if they refuse to acquiesce to jurisdiction for a particular action<sup>5</sup>;

7. Uncertainty related to potential environmental liabilities of RWE and its subsidiaries<sup>6</sup>; and

8. An odd lack of any written documentation related to significant issues such as the future plans for Jacobson Park and the formation of the Board of Directors of TWUS, which raise concerns with respect to the Joint Petitioners meeting their burden of regarding the immediate action<sup>7</sup>; and

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<sup>4</sup> Although the Joint Applicants brushed aside any potential concerns about the application of NAFTA to their operations, the creation of TWUS, a Delaware corporation, for the sole purpose of administrative efficiency in filing a tax return, clearly demonstrates how quickly and easily an administrative reorganization (for instance into a Mexican or Canadian intermediate owner) could drastically change the analysis. Once the merger closes, it is questionable at best whether this Commission would have any statutory authority to even review such a change, regardless of its potential consequences. See KRS 278.020(6).

<sup>5</sup> Because the Commission may need to enforce and order by utilizing the court-system pursuant to KRS 278.390, the resolution of this uncertainty is essential.

<sup>6</sup> For example, the Joint Petitioners have previously indicated that in line with commonly accepted corporate practices in Europe, RWE does not set aside separate funds to pay for its future environmental liabilities, which include coal mining reclamation, nuclear waste disposal, and plant decommissioning of its nuclear power plants. Instead, RWE relies on its current cash flow and, if necessary, the strength of its balance sheet. See Response to PSC Staff First Interrogatories, Item No. 4. These potential liabilities, which do not currently exist for AWW and its subsidiaries, are new factors that must be weighed by the Commission.

<sup>7</sup> Based on their response to certain discovery requests, the Joint Petitioners have no Board of Directors minutes or other written memoranda containing discussions regarding the formation of TWUS, and no written internal memoranda regarding the future of Jacobson Park. See Response to LFUCG First Requests, Item No. 3; Item No. 17 (filed Nov. 20, 2002). In addition to having no board minutes discussing the formation of TWUS, the Petitioners also have no authorization from their respective Boards of Directors to file this application with the Commission. KRS 271.B.8-010(2) provides that “All corporate powers shall be exercised by or under the authority of, and the

9. AWW's management will change upon consummation of the merger. Current Thames executive Bill Alexander will replace current AWW CEO James Barr. This appointment will not be the long-term solution at AWW. (See , November 13, 2002, RWE conference call beginning at 1:22:12).

The collective effect of these changes in circumstance since the Orders were entered establishes that the Merger is no longer consistent with the public interest. Therefore, the Commission should also deny the application on this basis.

#### IV. Necessary Conditions to Commission Approval

In the event the Commission determines the application should be approved despite the foregoing concerns, it should, at a minimum, impose at least the following conditions on such approval so as to reduce the potential for harm to the intervenors; and to provide substantive benefits to Kentucky-American's customers and the community. The LFUCG respectfully submits to the Commission that if the application is to be approved as consistent with the public interest, the Joint Petitioners must agree that:

1. TWUS shall be prohibited from becoming involved in the operational control of AWW or Kentucky-American without the specific approval of the Commission. (The Joint Petitioners have already agreed to accept this condition in their response to LFUCG Supplemental Requests, Item No. 8);

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business and affairs of the corporation under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation." The Joint Petitioners have not presented any board resolution or other action authorizing this application on behalf of any of the Joint Petitioners. See Response to LFUCG First Request, Item 2. In similar situations involving applications by municipal utilities, the Commission has held that applications not supported by a specific ordinance adopted by the municipality are void *ab initio*. See, City of Pikeville, PSC Case No. 2000-00540, Order of October 8, 2001. Given the lack of any indication of the approval of the creation of TWUS by any governing board, and the lack of any board action approving the filing of this application by any governing board, this application also appears to be void *ab initio*. Furthermore, the lack of such information is a factor that should be considered by the Commission in determining whether to approve the application or impose stringent conditions on any approval.

2. TWUS's Board of Directors shall be the same as AWW's post-transaction Board of Directors. (The Joint Petitioners have already agreed to accept this condition in their response to LFUCG Supplemental Requests, Item No. 15);

3. TWUS shall not engage in any commercial transactions with AWW or Kentucky-American. (The Joint Petitioners have already agreed to this condition, with the caveat that such preclusion would not limit financial transactions (e.g., the payment of dividends, the filing of a consolidated tax return) in their response to LFUCG Supplemental Requests, Item No. 16);

4. The Joint Petitioners that are not currently registered with the Kentucky Secretary of State to do business in the Commonwealth of Kentucky, shall do so; and shall in accordance with the terms of such registration, appoint a service of process agent in Kentucky<sup>8</sup>;

5. The Joint Petitioners shall provide the appropriate resolution or authorization of their respective governing boards or bodies demonstrating that such board or body has approved of such action prior to filing any application before the Commission;

6. The Joint Petitioners shall treat any tax savings achieved through the writeoff of losses incurred in unregulated U. S. operations against regulated U. S. earnings as a benefit of the

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<sup>8</sup> Although the Joint Petitioners claim that such an action is not necessary, this is the only adequate assurance that the Commission or any other party attempting to enforce an order of the Commission will have that certain of the Joint Petitioners can even be served in a reasonable and timely manner. The Joint Petitioners' contention in response to LFUCG Supplemental Request No. 1, that service can be achieved under KRS 454.210, is directly contrary to the legal position that certain of the Joint Petitioners have taken in the Appeal. In the Appeal, Thames and RWE have raised (among others), the following defenses: (i) that "The Court cannot assert or obtain jurisdiction over any party to this appeal based on KRS 454.210", and (ii) that there has been "insufficiency of service of process". See Answer of Thames and RWE in the Appeal case. These parties have arguably only submitted to the jurisdiction of the Court on a voluntary basis. This is despite the effort of the respective intervenors to serve Thames and RWE pursuant to the referenced statute. Allowing Thames, RWE or any other party to choose what actions they will agree to participate in, and what actions they will contest, is clearly an affront to the public interest.

transaction, and shall provide for the appropriate sharing of these benefits with Kentucky ratepayers through the earning sharings mechanism to be proposed by the Orders<sup>9</sup>;

7. The Joint Petitioners shall waive any protection that they might otherwise have under KRS 278.020(6), and submit an application to the Commission for the approval of any transfer of control as defined in KRS 278.020(4) or (5), regardless of whether the new entity that controls AWW or Kentucky-American is an affiliate or a subsidiary of the current owner of AWW or KAWC. No exception shall be made for reorganizations on the basis of whether they are characterized as “substantive” or merely “housekeeping” modifications, particularly in light of the Joint Petitioners’ admission that they do not have any policy in place which would define or limit the concept of “housekeeping” transactions. See, Response to LFUCG Supplemental Request No. 6;

8. The Joint Petitioners shall be required to honor the existing lease agreement with the LFUCG regarding Jacobson Park, and shall immediately notify the LFUCG in the event any of the Joint Petitioners determine that any portion of Jacobson Park is no longer “used and useful” to Kentucky-American in its operation of the water company; and further, that the Joint Petitioners shall negotiate in good faith with respect to any attempt by the LFUCG to further secure the future of Jacobson Park as a public recreational area;

9. The Joint Petitioners shall not assert as a defense to any enforcement action by this Commission or a Kentucky court any defense that is based on existing or future trade

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<sup>9</sup> This is not merely a theoretical concern. For instance, RWE has reported that start up costs for its energy trading business in the United States have resulted in a “negative operating profit” of \$27 million. See RWE conference call of November 13, 2002, beginning at 9:40. The Joint Petitioners expect AWW to become involved in expanded unregulated activities. November 21, 2002 hearing, video record beginning at 1:04:18. Lessening startup losses through the equitable sharing of the tax savings to be achieved by the regulated earnings of companies like Kentucky-American is clearly appropriate.

agreements, treaties, or other international compacts or foreign laws, or modifications thereto, unless such a defense would have also been available to AWW had the merger not taken place<sup>10</sup>;

10. With respect to any action filed by the Commonwealth of Kentucky, a county government, an urban county government, or a municipality, which is based upon the authority of such an entity to enforce or assert any right, privilege, regulatory or franchise power granted to such an entity by law or contract, the Joint Petitioners shall not assert any defense that is based on existing or future trade agreements, treaties, or other international compacts or foreign laws, or modifications thereto, unless such a defense would have also been available to AWW had the merger not taken place<sup>11</sup>;

11. The Joint Petitioners shall provide to the Commission, on at least an annual basis, a financial and statistical breakout of AWW's operations on a stand-alone basis that provides at least the equivalent information that is currently provided in AWW's annual reports to the SEC. (The Joint Petitioners have admitted in response to LFUCG Supplemental Request No. 14 that such information will not be available absent this condition);

12. The Joint Petitioners shall not use customer information, including customer mailing addresses and contact information, for any purpose that is not functionally related to the provision of regulated utility service. This restriction shall be interpreted to prohibit the use of such information by any of the Joint Petitioners (or their affiliates) to provide information to

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<sup>10</sup> Mr. McGivern would not commit to such a condition, citing an understandable concern about committing to such uncertainty. November 13, 2002, hearing, video record beginning at 1:43:30. However, the LFUCG submits that it is more important for the Commission not to commit to a transfer of control that may open the door to future changes of an unknown scope and nature and which may eventually end up outside the control of the Commission, or state and local governments (or even the United States government) to enforce or regulate unless a condition such as this is required.

<sup>11</sup> Mr. McGivern testified that he is not aware of any current law, treaty or international agreement that would affect such rights and privileges, at least with respect to the power of eminent domain. November 21, 2002, hearing, video record beginning at 1:46:16. If this is the case, this condition should merely maintain this situation.

Kentucky-American's customers for any purpose for which rate recovery would be refused due to the promotional or lobbying nature of such information.<sup>12</sup> The Joint Petitioners shall still be free to conduct promotional campaigns or lobbying efforts by any other lawful means, but shall not use customer lists or other information gathered from customers (or employee time paid for by ratepayers) for such purposes;

13. The Joint Petitioners shall report to the Commission within 10 days of receiving information related to the following:

- a. Any downgrade of the bond ratings of RWE or its subsidiaries;
- b. Any additional writeoffs on any of its recent acquisitions, including AWW;
- c. Any other significant changes in financial condition that might impair the ability of RWE to meet the commitments it has made in Case No. 2002-00018, including environmental liabilities that will have to be funded out of cash flow or from RWE's balance sheet; and

14. The Joint Petitioners shall establish commitments to shareholder funding for water assistance programs and business development programs similar to those that were agreed to as part of the settlement of the California regulatory proceeding, with the specific programs to be jointly developed by Kentucky-American and the parties to this proceeding.

V. Conclusion.

The Commission should not approve the application because it is not consistent with the public interest. Based on the evidence produced in this action, such an approval would be

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<sup>12</sup> Official communications from Kentucky-American are of such a nature that customers must read them, at the peril of failing to be informed about potentially very significant, or even hazardous, situations with respect to their water service -- unlike mailings from entities with which the customer has no existing relationship, or a purely voluntary business relationship for a nonessential, non-monopoly good or service. Captive customers should not have to read promotional or lobbying correspondence from Kentucky-American or any other regulated utility to determine whether it also contains information critical to their rates and service.

contrary to the Commission’s own standard of review. This is further supported by the significant changes of circumstance that have arisen since the Orders were entered, none of which appear to favor the public. Finally, in the event that such approval is given, significant conditions must be placed upon all of the Joint Petitioners to ensure that at a minimum the status quo does not continue to deteriorate.

WHEREFORE, the Lexington-Fayette Urban County Government respectfully requests that the application in this action be disapproved for the reasons provided herein, or, in the event that this application is approved, the foregoing listed conditions be placed on said approval by the Commission.

Respectfully submitted,

LEXINGTON-FAYETTE URBAN  
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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 5th day of December 2002.

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