

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

**IN THE MATTER OF:** )  
 )  
**NOTICE OF ADJUSTMENT OF THE RATES OF** ) **CASE NO. 2004-00103**  
**KENTUCKY-AMERICAN WATER COMPANY** )  
**EFFECTIVE ON AND AFTER MAY 30, 2004** )

**MOTION TO STRIKE REPLY BRIEF OF BLUEGRASS FLOW, INC.**

Kentucky-American Water Company (“Kentucky American Water”) hereby moves the Commission to strike the January 11, 2005 “reply” brief submitted by Bluegrass FLOW, Inc. (“FLOW”) in this matter. As set forth below, FLOW’s “reply” brief is not a reply at all. It is a sur-reply brief that, instead of addressing Kentucky American Water’s January 4, 2005 principal brief, addresses Kentucky American Water’s January 11, 2005 reply brief. The Commission has not permitted or invited sur-reply briefs in this matter. FLOW’s brazen disregard of the Commission’s directive concerning permissible briefs is unacceptable and, therefore, its “reply” brief must be stricken.

At the evidentiary hearing in this case, the submission of post-hearing briefs and the due dates for those briefs were addressed. The Commission directed that post-hearing principal briefs would be due no later than January 4, 2005 and reply briefs to those principal briefs would be due no later than January 11, 2005. In accordance with that directive, Kentucky American Water and each intervenor, including FLOW, submitted principal briefs on January 4, 2005. Thereafter, Kentucky American Water and each intervenor except FLOW submitted reply briefs

on January 11, 2005 that, naturally, “replied” to the January 4, 2005 principal briefs.<sup>1</sup> However, FLOW apparently believes that the rules that apply to other parties do not apply to it. Instead of submitting a reply brief that addressed points and arguments made in the January 4, 2005 principal briefs, FLOW’s so-called “reply” brief actually addresses the contents of Kentucky American Water’s January 11, 2005 reply to FLOW’s principal brief.

Kentucky American Water filed electronically its reply to FLOW’s principal brief on January 11, 2005 at 11:08 a.m. Kentucky American Water’s reply briefs were the first ones filed on that day. FLOW, which filed its “reply” brief at 2:50 p.m., did not even attempt to address Kentucky American Water’s principal brief. Instead, FLOW boldly offered argument (albeit illogical and ineffective) to the points demonstrated in Kentucky American Water’s reply brief.<sup>2</sup> Clearly, FLOW received Kentucky American Water’s reply brief and spent the following few hours preparing what is actually a sur-reply brief — a brief that was *not* permitted or invited by the Commission. Indeed, every other intervenor received Kentucky American Water’s reply briefs when FLOW did, but none of them made any sur-reply arguments when they filed their respective reply briefs later that day. In other words, every party in this case except for FLOW understood what briefs were permitted and, as one would expect, respected the Commission’s directive. FLOW’s “reply” brief flouts that clear directive.

FLOW’s attempted sur-reply brief is consistent with its previous conduct before this Commission both in this case and in others. For example, in this case, on the eve of the evidentiary hearing, FLOW filed a motion to dismiss this case based on misplaced arguments

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<sup>1</sup> In submitting reply briefs, Kentucky American Water filed three separate reply briefs, one of which was a reply to FLOW’s January 4, 2005 principal brief.

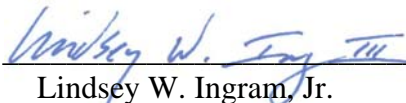
<sup>2</sup> For example, FLOW’s “reply” brief addresses a case (Howard v. Kingmont Oil, 729 S.W.2d 183 (Ky. App. 1987)) that was first cited in Kentucky American Water’s reply brief concerning the elementary concept of how numbers are rounded. Indeed, FLOW blatantly tells the Commission that it is responding to Kentucky American Water’s reply brief. (Reply Brief of Bluegrass FLOW, Inc., p. 1, third paragraph). On that statement alone, FLOW’s brief should be stricken as an improper sur-reply brief.

that could have made long before. Of course, the Commission quickly overruled that motion at the beginning of the evidentiary hearing. Additionally, FLOW's effort in Case No. 2002-00317 was characterized by poor presentation of witnesses and a lack of preparation and professionalism. (May 3, 2004 Order in Case No. 2002-00317).

When the Commission set the deadlines for principal briefs and reply briefs, it did *not* allow for sur-reply briefs. Notwithstanding that fact, the contents of FLOW's "reply" brief prove beyond a doubt that it is a "sur-reply" brief. No other parties to this proceeding were allowed to file sur-reply briefs nor did they attempt to. To ensure fairness to all parties and, more importantly, to ensure compliance with both the letter and the spirit of the Commission's instructions for briefs, FLOW's "reply" brief should be stricken.

Respectfully submitted,

STOLL, KEENON & PARK, LLP  
300 West Vine Street, Suite 2100  
Lexington, Kentucky 40507-1801  
Telephone: (859) 231-3000

BY:   
Lindsey W. Ingram, Jr.  
Lindsey W. Ingram III

**CERTIFICATION**

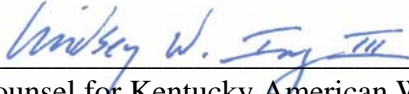
This is to certify that a true and accurate copy of the foregoing has been electronically transmitted to the Public Service Commission on January 21, 2005; that the Public Service Commission and other parties participating by electronic means have been notified of such electronic transmission; that, on January 21, 2005, the original and one (1) copy in paper medium will be hand-delivered to the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; and that on January 21, 2005, one (1) copy in paper medium will be served upon the following via U.S. Mail:

Gregory D. Stumbo, Esq.  
David Edward Spenard, Esq.  
Office of the Attorney General  
1024 Capital Center Drive, Suite 200  
Frankfort, Kentucky 40601  
[david.spenard@ag.ky.gov](mailto:david.spenard@ag.ky.gov)  
[dennis.howard@ag.ky.gov](mailto:dennis.howard@ag.ky.gov)

Leslye M. Bowman, Esq.  
David J. Barberie, Esq.  
Lexington-Fayette Urban County Government  
Department of Law  
200 East Main Street  
Lexington, Kentucky 40507  
[lbowman@lfucg.com](mailto:lbowman@lfucg.com)  
[dbarberi@lfucg.com](mailto:dbarberi@lfucg.com)

Joe F. Childers, Esq.  
201 W. Short Street, Suite 310  
Lexington, Kentucky 40507  
[childerslaw@yahoo.com](mailto:childerslaw@yahoo.com)  
[jparker@commaction.org](mailto:jparker@commaction.org)

Foster Ockerman, Jr., Esq.  
Martin, Ockerman & Brabant LLP  
200 North Upper Street  
Lexington, Kentucky 40507  
[ockerman@kycounsel.com](mailto:ockerman@kycounsel.com)

  
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Counsel for Kentucky American Water