

**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** )

**KENTUCKY-AMERICAN WATER COMPANY’S  
RESPONSE TO BLUEGRASS FLOW, INC.’S MOTION TO INTERVENE**

Kentucky-American Water Company (“Kentucky American Water”) opposes Bluegrass FLOW, Inc.’s (“BGFlow”) June 14, 2004 Motion to Intervene in this proceeding. As set forth below, BGFlow’s motion must be denied because Kentucky American Water’s customers’ interests are already fully represented by the Attorney General of the Commonwealth of Kentucky (“Attorney General”) and the Lexington-Fayette Urban County Government (“LFUCG”), both of whom are existing parties to this proceeding. Additionally, BGFlow has not demonstrated and cannot demonstrate that its participation in this proceeding would assist the Commission in considering this matter.

807 KAR 5:001, Section 3(8) governs intervention and states in relevant part:

If the commission determines that a person has a special interest in the proceeding that is not adequately represented or that full intervention of the party is likely to present issues or to develop facts that will assist the commission in fully considering the matter without unduly complicating or disrupting the proceeding, such person shall be granted full intervention.

Here, BGFlow has argued that: (1) it has a special interest that is not otherwise represented, and (2) it will present issues and/or develop facts which will assist the Commission in its consideration of the case.

It is abundantly clear that BGFlow does have a “special interest” but it is just as clear that BGFlow’s “special interest” has no relevance to the issue of the adjustment of Kentucky American Water’s rates. By BGFlow’s own admission, its “special interest” is to “research, publish and educate generally and as requested the comparative benefits of local ownership of water utilities.” (BGFlow’s motion, ¶ 4). That interest has nothing to do with the water rates that Kentucky American Water should be permitted to charge. It is not enough that BGFlow merely has a “special interest.” The special interest must be one that is not already adequately represented and one that has at least some relevance to the issues in the proceeding in which intervention is sought. Here, BGFlow’s claimed “special interest” is irrelevant to water rates.

Additionally, even if BGFlow's “special interest” somehow had relevance to this proceeding, the presence of the Attorney General and the LFUCG in this case necessarily means that *all* of Kentucky American Water’s customers are represented, regardless of whether they are in favor of municipal ownership of Kentucky American Water. BGFlow implicitly recognizes this fact by its attempt to argue that the presence of the Attorney General and the LFUCG does not result in adequate representation of certain water customers. However, BGFlow’s argument why the Attorney General and the LFUCG do not provide adequate representation is misplaced.

BGFlow attempts to dodge the fact that the Attorney General’s presence in this case requires him to represent *all* customers (regardless of whether those customers’ interests are represented by the LFUCG and regardless of whether those customers are pro-condemnation or anti-condemnation) by arguing that the Attorney General is somehow constrained in this matter by his duty to represent all the citizens of the Commonwealth. (BGFlow’s Motion, ¶ 6). This argument is non-sensical. Indeed, as discussed below, the Commission recently stated that “BGFlow has not demonstrated to the Commission that the customers it represents will not be

adequately represented by the Attorney General or that they have an interest different from any other customer of Kentucky-American.” (May 3, 2004 Order in Case No. 2003-00478, p. 4). Additionally, there is no reason to believe that the Attorney General will shirk his duty to represent the affected consumers in this case and it is inappropriate for BGFlow to even imply that could happen. The Attorney General has a statutory right of intervention in this rate-making proceeding for the sole purpose of representing consumers’ interests. *KRS § 367.150(8)*. Certainly, not all of those consumers have the same political views, but the mere fact of differing political views cannot result in intervention for every group of consumers holding a different political view. This is especially true when the political view in question is one that is completely unrelated to the issues before the Commission.

BGFlow also argues that the LFUCG does not represent BGFlow’s own “special interest” because Kentucky American Water has customers living outside Fayette County. That “special interest,” local ownership of Kentucky American Water, has no place in this rate case. Also, there is no reason to believe that the LFUCG will argue for customers in Fayette County with arguments that do not pertain to customers outside of Fayette County.

BGFlow’s second argument — that it should be permitted to intervene because it will present issues and develop facts that will assist the Commission in its consideration of this case — again misses the mark. BGFlow has already been denied intervention in a case that was recently consolidated with Case No. 2004-00103. By Order of June 7, 2004, the Commission consolidated Case No. 2003-00478<sup>1</sup> with Case No. 2004-00103. In Case No. 2003-00478, BGFlow moved for intervention and made many of the same arguments in support of intervention as it makes in its current motion in this case. (*Compare* BGFlow’s January 9, 2004

---

<sup>1</sup> *In the Matter of: Application of Kentucky-American Water Company for Approval of Accounting Accruals.*

Motion to Intervene and its February 13, 2004 Reply in Support of its Motion to Intervene in Case No. 2003-00478 with its currently pending Motion to Intervene in Case No. 2004-00103).

The Commission denied the motion to intervene in Case No. 2003-00478 on May 3, 2004. In that Order, the Commission noted that: (1) BGFlow's presence in Case No. 2002-00317 was characterized by poor presentation of witnesses and a lack of preparation and professionalism by one witness in particular (May 3, 2004 Order, p. 3); (2) Case No. 2003-00478 (which has now been consolidated with this case) is not a "continuing conversation" with regard to ownership, management and control of Kentucky American Water (which is BGFlow's "special interest") (May 3, 2004 Order, p. 3); and (3) BGFlow did *not* demonstrate that its "interest is any different from any other customer of Kentucky-American" not already represented by the Attorney General (May 3, 2004 Order, p. 4). All of these findings are true for Case No. 2003-00478 and are equally true for this case before the Commission.

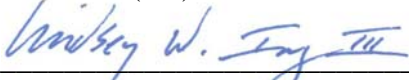
Clearly, the Commission has already ruled that BGFlow did not demonstrate that it would offer assistance to the Commission in Case No. 2003-00478. Just as clearly, the Commission has ruled that Case No. 2003-00478 and Case No. 2004-00103 "involve common factual and legal issues" that called for consolidation of the two cases (June 7, 2004 Order in Case No. 2003-00478). Thus, for the exact same reasons that the Commission denied intervention in Case No. 2003-00478, it should deny intervention in this consolidated proceeding.<sup>2</sup> Stated another way, BGFlow's second bite at the same intervention apple must be denied.

For the reasons set forth above, BGFlow's Motion to Intervene must be denied.

---

<sup>2</sup> BGFlow's attachment of a June 3, 2004 *Lexington Herald-Leader* article regarding RWE Thames Water's activities in Shanghai, China is inappropriate as it has absolutely no relevance to this case or whether BGFlow should be permitted to intervene in this case. Any other response to that attachment is unnecessary.

STOLL, KEENON & PARK, LLP  
300 West Vine Street, Suite 2100  
Lexington, Kentucky 40507-1801  
(859) 231-3000  
(859) 253-1093 (fax)

By:   
\_\_\_\_\_  
Lindsey W. Ingram, Jr.  
Lindsey W. Ingram III

Attorneys for Kentucky-American  
Water Company

**CERTIFICATION**

This is to certify that a true and accurate copy of the foregoing has been electronically transmitted to the Public Service Commission; that the Public Service Commission and other parties participating by electronic means have been notified of such electronic transmission; that, on June 22, 2004, the original and one (1) copy in paper medium will be delivered to the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; and that on June 22, 2004, one (1) copy in paper medium will be delivered to the following via U.S. Mail:

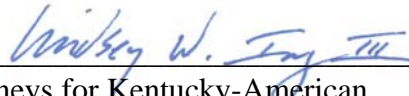
Gregory D. Stumbo  
David Edward Spenard  
Office of the Attorney General  
1024 Capital Center Drive, Suite 200  
Frankfort, Kentucky 40601  
[david.spenard@law.state.ky.us](mailto:david.spenard@law.state.ky.us)

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

Joe F. Childers  
201 W. Short St., Suite 310  
Lexington, Kentucky 40507  
[childerslaw@yahoo.com](mailto:childerslaw@yahoo.com)

Foster Ockerman, Jr.  
MARTIN, OCKERMAN & BRABANT LLP  
200 N. Upper St.  
Lexington, Kentucky 40507  
[ockerman@kycounsel.com](mailto:ockerman@kycounsel.com)

STOLL, KEENON & PARK, LLP

By:   
Attorneys for Kentucky-American  
Water Company