

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

APPLICATION OF KENTUCKY-AMERICAN)
WATER COMPANY FOR AN ADJUSTMENT)
OF ITS RATES)

Case No. 2004-00103

REPLY BRIEF OF BLUEGRASS FLOW, INC.

Now comes Bluegrass FLOW, Inc., by counsel, and, in accord with the amended procedural schedule, submits this Reply Brief in support of its positions in this matter.

This Intervenor begs leave to repeat the point that this Commission can have no higher duty and obligation than to ensure the enforcement of its own orders and the proper conduct of its procedures.

Applicant ignores in its Reply Brief its procedurally improper *ex parte* contacts; perhaps it has no good reply. This Commission should firmly denounce such activity and should not reward that conduct in consideration of the Application.

Applicant seeks to quibble over whether one round up or rounds down the number of individual who should be on its board of directors in order to comply with the Order of the Commission. The single case cited, Howard v. Kingmont Oil Co., 729 SW2d 183 (CA, Ky. 1983), does not stand for the proposition that Kentucky law requires rounding down; it merely states that "... if the intent of the trial court..." was to "round to the nearest whole percentage..." it should have rounded down. If the intent of the trial court was otherwise, the comment is pointless -- but it focuses on intent, which is proper.

It is not a matter of applied mathematics. It is a matter of the degree of independent local opinion able to be voiced at a board meeting. The Commission may examine the record, but counsel submits the intent of the Commission was to establish forty (40%) as the level of outside directors, having reached that number as a step back from the request of Intervenors for at least fifty-one (51%) percent. It is improbable that the Commission meant three out of eight (37.5%).

One can also quibble, as Applicant seeks, the characterization of hired legal counsel for Applicant in the context of the intent of the Commission. It is submitted that the intent of the condition that "employees and officers" of the Applicant and its affiliated entities not be included among the local directors is to remove financial matters from possibly influencing a decision.

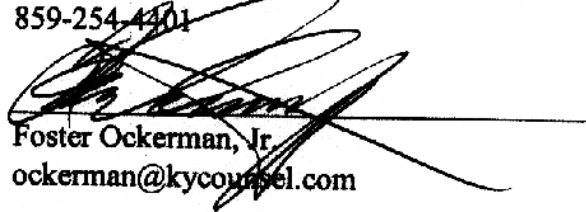
And in any event, compliance with the absolute requirement of the Order by changing the number of directors to ten (10) and electing an absolute forty percent is so simple, one wonders why it hasn't been done. Regardless of whether one rounds down or up, or included legal counsel or not, the fact remains that there is an event of noncompliance. If there is a violation of the Commission's Order in small, simple things, the concern is whether other violations of a more complex nature exist.

We submit that the intent of Condition No. 49 is a requirement that forty (40%) percent of the members of the board of directors of Kentucky-American Water Company be independent outside directors who are also ratepayers, free of financial connection to Applicant, and that that number be four individuals out of the current total board members.

Bluegrass FLOW, Inc. requests that no increase of any character be approved until the Commission has satisfied itself after diligent investigation of the full compliance by KAWC and RWE et al with all relevant Orders and entered that finding, that any approved rate increase only be initiated on or

after the entry of the Commission's future Order finding full compliance, and that refunds be ordered through that date.

Respectfully submitted,
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Certificate of Service

The undersigned certifies that the original and one copy of the foregoing document have been filed via United States mail, first class postage prepaid, to Elizabeth O'Donnell, Executive Director, Public Service Commission, 211 Sower Blvd., P. O. Box 615, Frankfort, KY 40602-0615, and by uploading an electronic version of said document to the file transfer protocol site designated by the Commission; that the electronic version is a true and accurate copy of the said document(s) filed in paper medium, the electronic version has been transferred to the Commission, and the Commission and other parties have been notified by electronic mail of the filing; and that a copy of the foregoing was served by first class mail, postage prepaid on the following this the 11th day of January, 2005.

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