

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

THE JOINT PETITION OF KENTUCKY-AMERICAN)
WATER COMPANY, THAMES WATER AQUA)
HOLDINGS GMBH, RWE AKTIENGESELLSCHAFT,)
THAMES WATER AQUA US HOLDINGS, INC.,) CASE NO. 2006-00197
AND AMERICAN WATER WORKS COMPANY,)
INC. FOR APPROVAL OF A CHANGE IN CONTROL)
OF KENTUCKY-AMERICAN WATER COMPANY)

**LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT'S RESPONSE**

COMES the Lexington-Fayette Urban County Government (the "LFUCG"),
by counsel, pursuant to the Commission's June 19, 2006 order and submits the
following Response to the Joint Petitioners' Memorandum.

"[C]ourts must presume that a legislature says in a statute what it means
and means in a statute what it says . . . [and][w]hen the words of a statute are
unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'" McDowell v. Jackson Energy RECC, 84 S.W.3d 71, 77 (Ky. 2002) (quoting Connecticut Nat'l Bank v. Germain, 503 U.S. 249, 253-4, 112 S.Ct. 1146, 1149 (1992)).

This black letter law, which applies equally to the Commission, is
conveniently ignored by the Joint Petitioners, who essentially argue that the
terms "acquirer", "acquire", and "acquisition" as used in KRS 278.020(5) and (6)
are ambiguous, or are synonymous with the word "transfer" in subsection (5).
This is nonsensical. The law presumes that there is a reason why the legislature

included both terms in subsection (5), but chose to leave the term “transfer” out of subsection (6). The “liberal construction” of a statute that the Joint Petitioners seek (see e.g., Joint Petitioners’ Memorandum, pages 2, 6, and 8) does not include altering, expanding or ignoring the plain meaning of an unambiguous statute.

The Joint Petitioners are aware of the difficulty of justifying an IPO under KRS 278.020, and argue that the Commission should simply ignore the explicit language of KRS 278.020(5), which requires a standards review for a “person acquiring” a utility, by apparently substituting American Water Works Company for the actual (unknown) acquirers. (see Joint Petitioners’ Memorandum, page 4 “the Commission may be precluded from considering whether **American Water continues to have . . .** [the requisite abilities]” (emphasis added)).

Not only is this argument later directly contradicted by the Petitioners (American Water is “thus not technically the ‘acquirer’ of anything.” (Joint Petitioners’ Memorandum, at page 7)), it is contrary to the above law and should not be accepted by the Commission. On its face, KRS 278.020(6) only applies to a controlling acquirer, and not the transferor, which makes sense. What does not make sense is to allow a change of control proceeding to advance under either section without clear identification of the actual acquirer(s).

Respectfully submitted,

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

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CERTIFICATION, NOTICE OF FILING, CERTIFICATE OF SERVICE

Pursuant to Commission Order, counsel certifies that the electronic version of this document is a true and accurate copy of the document filed in paper medium, a copy in paper medium has been served on all the parties of record as further certified below, the electronic version has been transmitted 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, and an electronic version has been uploaded to the file transfer protocol site designated by the Executive Director. I further certify that an original and one (1) copy of this document were served by first class U.S. Mail delivery, postage prepaid, to Beth O'Donnell, Executive Director, Public Service Commission, P.O. Box 615, 211 Sower Boulevard, Frankfort, Kentucky 40602-0615; furthermore, it was served by mailing a copy by first class U.S. Mail delivery, postage prepaid, on the following, all on this the 3rd day of July 2006:

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