

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)

O R D E R

The Attorney General (“AG”) has moved to compel the Joint Petitioners¹ to produce non-redacted responses to certain requests for information. He further requests that the Commission conduct an *in camera* review of these responses to ascertain the validity of the Joint Petitioners’ claim for confidentiality and its exclusion from consideration as evidence. The Joint Petitioners have responded to the motion and have provided non-redacted copies of the materials in question to the Commission for an *in camera* inspection. Having conducted our inspection, we deny the AG’s motion.

During the discovery phase of this proceeding, Commission Staff and Lexington-Fayette Urban County Government (“LFUCG”) requested that the Joint Petitioners provide all reports from the Joint Petitioners’ financial advisers related to the proposed transfer of control transaction² and all board of director minutes and information

¹ “Joint Petitioners” are: Kentucky-American Water Company; American Water Works Company; Thames Water Aqua US Holdings, Inc.; Thames GmbH; and RWE Aktiengesellschaft.

² Commission Staff’s First Information Request to Joint Petitioners, Item 8.

provided to any Board of Directors in which change of control is discussed.³ The Joint Petitioners provided this information, but also petitioned for confidential treatment of these responses.

Pursuant to 807 KAR 5:001, Section 7, when a party petitions for confidential treatment for any material, it must serve a copy of that material on all parties “with only those portions for which confidentiality is sought obscured.” The material, when filed with the Commission, is considered confidential pending a Commission determination on whether the material merits such treatment. Any party to the proceeding may obtain access to the unobscured material by entering into a protective agreement with the party seeking the confidential treatment.

The AG entered into a protective agreement with the Joint Petitioners regarding the materials in question. Joint Petitioners then provided a non-redacted copy of most of the materials in question, but continued to withhold some of the materials from the AG.⁴

The AG argues that Joint Petitioners’ action is improper. He asserts that the Joint Petitioners have failed to demonstrate a legitimate basis for withholding the materials in question. He has moved for the Commission to conduct an *in camera* inspection of the materials in question to determine the validity of Joint Petitioners’ claim to withhold them.

³ LFUCG’s Initial Requests for Information, Item 45.

⁴ For a list of the withheld materials, see AG’s Motion to Compel, Exhibit A. The materials that Joint Petitioners filed with the Commission also had portions redacted.

Joint Petitioners defend their refusal to provide the materials on three bases.⁵ They assert that certain of the materials are part of a presentation containing legal advice regarding compliance with the Sarbanes-Oxley Act.⁶ These materials involve the rendition of legal advice and are therefore protected from discovery under the attorney-client privilege. They note that other material involves a discussion of various state regulatory issues and strategies and is legal advice gathered from attorneys in states where possible regulatory approvals of the proposed transaction would be required.⁷ This material, they assert, is protected from discovery by the attorney-client privilege and the work product doctrine. As to the remaining material, it does not contain any discussion of the change of control of AWWC and is therefore not relevant to the proceeding.⁸

Joint Petitioners have provided to the Commission for inspection all material that that has been withheld on the grounds of relevancy.⁹ Having carefully reviewed this material, we find that none of this material discusses the change of control of AWWC or

⁵ Since the filing of the AG's Motion, Joint Petitioners have provided the AG with the material listed in Items 1 (b) and (c) of Exhibit A. Accordingly, we do not address that material in this Order.

⁶ AG Motion to Compel, Exhibit A, Item 1(a).

⁷ Id. at Items 1(d) and (e).

⁸ Id. at Items 2 – 5.

⁹ On August 10, 2006, Commission Staff held an informal conference in this proceeding at which the AG agreed to withdraw his Motion to Compel as it related to materials that Joint Petitioners asserted an attorney-client or work product privilege in return for Joint Petitioners providing a detailed description of that material. The AG reserved his right to renew his motion. As a result of this agreement, the Commission has not addressed these materials in this Order.

is relevant to the issues before us and that Joint Petitioners may properly redact it from their response.

IT IS THEREFORE ORDERED that:

1. The AG's Motion for *In Camera* Review is granted.
2. AG's Motion to Compel is denied.

Done at Frankfort, Kentucky, this 16th day of August, 2006.

By the Commission

ATTEST:



Executive Director