

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC KENTUCKY-AMERICAN WATER)	
COMPANY'S REQUEST FOR PERMISSION TO)	CASE NO.
DEVIATE FROM 807 KAR 5:006, SECTION)	2016-00394
26(6)(B))	

ORDER

On November 18, 2016, Kentucky-American Water Company ("Kentucky-American") filed a Petition for Deviation ("Petition"), pursuant to 807 KAR 5:006, Section 28, through which it requests a deviation from the inspection requirements of 807 KAR 5:006, Section 26(6)(b).

On July 25, 2017, the Commission entered an Order that, among other things, set this matter for an August 22, 2017 hearing to take evidence on Kentucky-American's request for deviation.

On August 2, 2017, Kentucky-American filed a motion to reschedule the hearing date. The Commission granted the motion and entered an Order on August 7, 2017, rescheduling the hearing to October 31, 2017.

On April 28, 2016, prior to the filing of this request for deviation, Kentucky-American was cited on a Commission inspection report for failing to comply with the annual inspection requirement for meters, meter settings, and valves contained in 807 KAR 5:006, Section 26(6)(b).

Kentucky-American also filed on May 19, 2017, a Petition for Confidential Treatment of the Response to Item 1 of Commission Staff's Second Request for Information.

Kentucky-American responded to two rounds of discovery in this matter. The Commission held an evidentiary hearing on October 31, 2017, and Kentucky-American filed its responses to post-hearing data requests. The matter now stands submitted to the Commission for a decision.

BACKGROUND

807 KAR 5:006 Section 26(6)(b) requires that "[t]he utility shall annually inspect all structures. . .including meters, meter settings and valves. . . ." However, Kentucky-American currently does not have regularly scheduled physical inspections of its meters. In 2013, Kentucky-American completed a transition to an automatic meter read ("AMR") system. Prior to this, Kentucky-American meters were inspected monthly when the meters were read for billing purposes. Once the transition to an AMR meter system was complete, the monthly meter readings were performed remotely by technicians.

Regarding valves, Kentucky-American states that prior to 2015, all valves 16 inches or larger were inspected every two years, and all valves smaller than 16 inches were inspected every five years. In 2015, Kentucky-American changed the policy so that valves 16–24 inches were inspected every two years, and valves larger than 24 inches were inspected every year. The more frequent inspections of the largest valves were

instituted as an acknowledgement of the critical role these valves play in the safe operation of the system.¹

Before the 2015 change, Kentucky-American had followed the same valve-inspection schedule since at least the early 1970s.² When presented with a document on file with the Commission purporting to be an outline of inspection procedures for valves and meters which stated inspections were performed annually, Kentucky-American claimed it had no evidence that it had prepared or filed such a document and had no knowledge of how the Commission came to be in possession of the document.³

DISCUSSION

At the hearing on October 31, 2017, witnesses testified regarding Kentucky-American's current and proposed inspection procedures for its meter, meter settings and valves.

Kentucky-American has asserted that the current AMR meters do not need regularly scheduled physical inspections. When the meters are read remotely through a monthly drive-by, data from the meter is collected and analyzed, and work orders are issued immediately for any issues arising from analysis of the data. Work orders are also issued if customers call in with concerns about their meters.⁴ Linda Bridwell, manager of

¹ Kentucky-American's Response to Commission Staff's Second Request for Information, (filed April 20, 2017) Item 1.

² Id. at Item 3.c.

³ Id. at Item 3.a.

⁴ Kentucky-American's Response to Commission Staff's First Request for Information, Item 2.a.

rates and regulations for Kentucky-American, testified that there is no significant information about the meters that could be collected from a physical inspection that is not collected from a monthly drive-by reading of the meter. Ms. Bridwell asserted that the drive-by remote readings provide more data about the proper functioning of the meters than would a physical inspection.⁵

During cross-examination, the Commission expressed concern that a utility as large as Kentucky-American had been out of compliance with the regulation since at least the 1970s, and there had been no effort made to correct the situation either by instituting policies to bring the company into compliance or by applying for a deviation. Kentucky-American provided no acknowledgment that it was out of compliance regarding this issue.

When asked about these concerns, Ms. Bridwell testified that Kentucky-American is working to develop internal processes to monitor which agencies regulate Kentucky-American, including but not limited to the Commission, and to monitor compliance with all applicable regulations. She testified that Kentucky-American would be willing to file a copy of its new policies and procedures to ensure compliance with the Commission once this internal review had been completed.⁶

Ms. Bridwell also addressed the requested deviation regarding valves. She testified that Kentucky-American believed its current valve inspection schedule met the intention of the regulation by balancing cost to customers with safety.⁷ She emphasized

⁵ Video transcript of Hearing (“VTH”) at 9:19:57.

⁶ Id. at 9:25:55.

⁷ Id. at 9:09:25.

that Kentucky-American places valves at intervals frequent enough that if one valve were to fail, there would be another nearby that could be used to shut off water flow.⁸

Kevin Rogers, vice-president of operations for Kentucky-American, testified that in 2015, Kentucky-American determined that valves 24 inches or larger needed to be inspected annually because “the risk versus the probability of failure was such that it warranted increasing a step and going to an annual inspection.”⁹ Prior to this, all valves larger than 16 inches were inspected every two years,¹⁰ and valves smaller than 16 inches were inspected every five years.¹¹ Kentucky-American had kept this inspection schedule since at least the 1970s.¹² Mr. Rogers provided no reason as to why Kentucky-American had never been in compliance with the regulatory requirement of annual inspections for all valves, or for why it had not asked for a deviation from this requirement.

Mr. Rogers testified that there was no evidence that the appropriate regulations were consulted as a starting point in 2015, when Kentucky-American was reviewing its inspection procedures for valves larger than 24 inches.¹³ Again, there was no explanation for why the regulations were not used as the logical starting point for a review of this type.

⁸ Id. at 9:30:45.

⁹ Id. at 10:09:00

¹⁰ Kentucky-American’s Response to Commission Staff’s Second Request for Information, Item 1.

¹¹ Id. at Item 3.c.

¹² Id.

¹³ VTH at 10:08:04.

Kentucky-American President Nick Rowe, testified that up to this point, Kentucky-American had relied on individual regulatory agencies to alert it to a change in existing regulations. He stated that the company was planning to put into place more internal monitoring procedures so that it would no longer depend solely on outside notification of regulatory changes.¹⁴

FINDINGS

Based upon a review of the evidence and being otherwise sufficiently advised, the Commission finds that Kentucky-American is not in compliance with 807 KAR 5:006, Section 26(6)(b), and, in fact, may never have been in compliance. However, Kentucky-American has shown good cause, pursuant to 807 KAR 5:006, Section 28, to be permitted to deviate from this requirement.

Kentucky-American is performing monthly drive-by, remote readings of its AMR meters, which provide Kentucky-American with more frequent information on meter functioning than would an annual physical inspection. Kentucky-American is inspecting its largest and most important valves according to regulatory requirements. Concerns about less-frequent inspections of smaller valves are offset by Kentucky-American's practice of placing valves at frequent enough intervals so that if one fails, there is another close by.

¹⁴ Id. at 10:26:41.

CONFIDENTIALITY

On May 19, 2017, Kentucky-American filed a petition, pursuant to KRS 61.878 and 807 KAR 5:001, Section 13, requesting that the Commission grant confidential treatment of information provided by Kentucky-American in its Response to Item No. 1 of Commission Staff's Second Request for Information ("Item No.1"). The designated material is more specifically described as confidential information provided by Kentucky-American's inspection procedures used to assure safe and adequate operation of the utilities facilities.

As a basis for its request, Kentucky-American states that its valve-inspection procedures are a product of extensive time and money invested by Kentucky-American's parent company, American Water Works Company, Inc. ("AWWC"). Disclosing this information would provide an unfair commercial advantage to Kentucky-American's and AWWC's competitors. Kentucky-American has requested and been granted confidential treatment for this information in previous cases.

Having considered the petition and the material at issue, the Commission finds that the designated material contained in Item No. 1 is generally recognized as confidential or proprietary, and therefore meets the criteria for confidential treatment and is exempted from public disclosure pursuant to KRS 61.878(1)(a) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. Kentucky-American's Motion for a deviation from 807 KAR 5:006, Section 26(6)(b), on inspection of meters and meter settings is granted.

2. Kentucky-American's Motion for a deviation from 807 KAR 5:006, Section 26(6)(b), on inspection of valves is granted.

3. Kentucky-American shall file with Commission a copy of its inspection procedures within ten days of the date of this Order. These procedures shall conform to the inspection procedures and schedules testified to at the hearing held on October 31, 2017.

4. Kentucky-American shall file with the Commission its written policies or procedures relative to how it will ensure future compliance with the Commission's statutes and regulations within 30 days of the issuance of this Order.

5. Kentucky-American's petition for confidential protection for the designated material contained in Item 1 is granted.

6. The designated material contained in Item 1 shall not be placed in the public record or made available for public inspection until further Orders of this Commission.

7. Use of the material in question in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).

8. Kentucky-American shall inform the Commission if the material in question becomes publicly available or no longer qualifies for confidential treatment.

9. If a non-party to this proceeding requests to inspect the material granted confidential treatment by this Order, the Kentucky-American shall have 20 days from receipt of written notice of the request to demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If Kentucky-


American is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

10. The Commission shall not make the requested material available for inspection for 20 days following an Order finding that the material no longer qualifies for confidential treatment in order to allow Kentucky-American to seek a remedy afforded by law.

By the Commission

ENTERED
DEC 12 2017
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2016-00394

*Honorable Lindsey W Ingram, III
Attorney at Law
STOLL KEENON OGDEN PLLC
300 West Vine Street
Suite 2100
Lexington, KENTUCKY 40507-1801

*Kentucky-American Water Company aka
2300 Richmond Road
Lexington, KY 40502

*Linda C Bridwell
Director Engineering
Kentucky-American Water Company aka Kentucky
2300 Richmond Road
Lexington, KY 40502