

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:)
)
THE APPLICATION OF KENTUCKY-AMERICAN) CASE NO. 2012-00520
WATER COMPANY FOR AN ADJUSTMENT OF)
RATES ON AND AFTER JANUARY 27, 2013)

PETITION FOR CONFIDENTIAL TREATMENT
OF RESPONSES TO ITEMS 3(a) AND (c), 4(b), 16 AND 18(c) OF THE COMMISSION
STAFF’S FIRST SET OF INFORMATION REQUESTS

Kentucky-American Water Company (“KAWC”) moves the Kentucky Public Service Commission (“Commission”) pursuant to 807 KAR 5:001, Section 7, and KRS 61.878(1)(c) to grant confidential treatment to information relating to the accounting and employment affairs of KAWC and its parent company. In support of this Petition, KAWC states as follows:

1. On January 9, 2013, the Commission Staff served its First Set of Information Requests on KAWC. Items 3(a) and (c) ask KAWC to “provide a copy of the workpapers and calculations that Kentucky-American used to develop its forecasted test-period financial information,” as well as a copy in Excel. Item 4(b) of those requests asks for information concerning KAWC “internal accounting manuals, directives, policies, and procedures” that were submitted in Case No. 2010-00036 (KAWC’s last general rate case). Item 16 asks for “all wage, compensation, and employee benefits studies, analyses, and surveys that Kentucky-American has conducted, commissioned, or used.” Item 18(c) asks for “the level of incentive pay awarded to all individuals participating in the program for the previous five calendar years compared to the level of incentive pay available to each participant in the forecasted period.”

2. The Kentucky Open Records Act exempts from disclosure certain confidential or proprietary information. KRS 61.878(1)(c). To qualify for this exemption, and, therefore,

maintain the confidentiality of the information, a party must establish that disclosure of the information would permit an unfair commercial advantage to competitors of the party seeking confidentiality.

3. The response to Items 3(a) and (c) includes the workpapers that were used to develop KAWC's filing schedules. Certain of these workpapers contain employees' names, personal identification numbers, and compensation information. Similarly, the response to Item 18(c) lists not only the employees that are eligible to receive incentive compensation, but the amount each employee received for the last five years. The Kentucky Court of Appeals has stated, "information such as ... wage rate ... [is] generally accepted by society as [a] detail [] in which an individual has at least some expectation of privacy." *Zink v. Department of Workers' Claims, Labor Cabinet*, 902 S.W.2d 825, 828 (Ky. Ct. App. 1994). The Commission should therefore give confidential treatment to the information included in response to Items 3(a) and (c), as well as Item 18(c), because disclosing the contents thereof would invade the privacy rights of the individuals named.

4. The response to Item 4(b) contains accounting policies and procedures that are the product of extensive time and money invested by KAWC's parent company, American Water Works Company, Inc. ("AWWC"). The response to Item 16 consists of salary survey information that is also the product of extensive time and money invested by AWWC. Both responses consist of commercial information that is confidential and proprietary, the disclosure of which would unfairly advantage AWWC's and/or KAWC's competitors. If those competitors have free access to the same information that AWWC expended substantial resources to develop, they will derive an unfair commercial advantage. In Case No. 2010-00036, the Commission Staff asked for the same information. KAWC petitioned for confidential protection when it

provided the information in that case, and, by letter of June 16, 2010 from the Commission, the petition was granted. KAWC seeks the same protection in the current case.

5. KAWC requests that the information be held confidentially in perpetuity. KAWC cannot envision a period of time in which it would be appropriate for employees' private compensation information or KAWC's proprietary commercial information to be disclosed in the public realm.

6. The description of the responsive documents above demonstrates that they merit confidential treatment. If the Commission disagrees, however, it must hold an evidentiary hearing to protect the due process rights of KAWC and so that the Commission will have a complete record to enable it to reach a decision with regard to this matter. *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, Ky. App., 642 S.W.2d 591, 592-94 (1982).

7. KAWC does not object to the disclosure of the information at issue to the parties to this proceeding upon the execution of a confidentiality agreement. In accordance with the Commission's December 17, 2012 Order, for the responses to Item Nos. 4(b), 16, and 18(c), KAWC is filing (1) a copy of the material with those portions for which confidentiality is sought redacted on the Commission's web portal (in addition to the original and paper copy provided of the responses); (2) a paper copy of the materials with the confidential information clearly designated in yellow; and a (3) CD-ROM containing an electronic version of such material with highlighting.

Because the response to Item No. 3(c) is being provided in Excel format with links intact, KAWC is providing (1) a "Confidential" CD-ROM that contains all of the workpapers, including those with confidential information and (2) a "Public" CD-ROM that contains all of

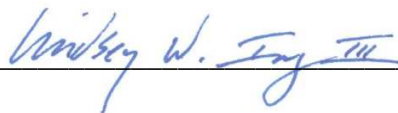
the workpapers, with the confidential information removed. The Excel files that contain confidential information are designated as such in the header. The Excel files are identical to the .pdf versions of the workpapers that KAWC is filing in response to Item No. 3(a).

WHEREFORE, KAWC respectfully requests that the Commission grant confidential treatment for the information at issue, or in the alternative, schedule an evidentiary hearing on all factual issues while maintaining the confidentiality of the information pending the outcome of the hearing.

Dated: January 23, 2013

Respectfully submitted,

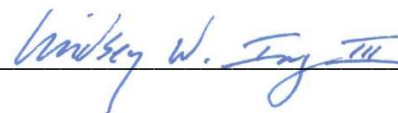
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BY: 
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CERTIFICATE

In accordance with Ordering Paragraph No. 10 of the Commission's December 17, 2012 Order, this is to certify that Kentucky-American Water Company's January 23, 2013 electronic filing is a true and accurate copy of the documents to be filed in paper medium; that the electronic filing has been transmitted to the Commission on January 23, 2013; that an original and one copy of the filing will be delivered to the Commission on January 23, 2013; and that no party has been excused from participation by electronic means.

STOLL KEENON OGDEN PLLC

By 
Attorneys for Kentucky-American Water Company