

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:)
)
APPLICATION OF KENTUCKY-AMERICAN)
WATER COMPANY FOR AN ADJUSTMENT) **CASE NO. 2015-00418**
OF RATES)
)

PETITION FOR CONFIDENTIAL TREATMENT
OF RESPONSES TO ITEMS 3(a) AND (c), 4(b), 16, 18(c), AND 25(a) 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 13, 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:

On January 8, 2016, the Commission Staff served its First Set of Information Requests on KAWC. Items 3(a) and (c) ask KAWC to “[p]rovide a copy of the work papers 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’s “internal accounting manuals, directives, policies, and procedures.” 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.” Item 25(a) requests a “copy of the most recent actuarial study that was performed to calculate Kentucky-American’s annual accrual of pension costs and OPEB costs....”

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.

The response to Items 3(a) and (c) includes the work papers that were used to develop KAWC's filing schedules. Certain of these work papers contain employees' job titles, identification numbers, and compensation information. Similarly, the response to Item 18(c) lists not only the employees (by title) 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.

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 responses to Item 16 and Item 25(a) consist of information that are also the product of extensive time and money invested by AWWC. Furthermore, due to its financial nature and American Water Works Company, Inc.'s publicly traded status, the response to Item 25(a) contains information that is governed by the Securities and Exchange Commission's Regulation FD (fair disclosure) in that it contains material non-

public information, the disclosure of which could require broad, nonexclusionary disclosure to the general public. These three 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. 2012-00520, the Commission Staff and the Attorney General asked for the same information at issue in this Petition. KAWC petitioned for confidential protection when it provided the information in that case, and, by Orders of April 17, 2014 and August 1, 2014 from the Commission, those petitions were granted. KAWC seeks the same protection in the current case.

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.

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).

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. For the responses to Item Nos. 3(a), 4(b), 16, 18(c) and 25(a), in compliance with 807 KAR 5:001, 13(2)(e), KAWC is filing

one paper copy under seal that identifies the information for which confidential protection is sought and one electronic copy with the same information obscured. Because confidential treatment is sought for the entirety of these documents, written notification that the entire document is confidential has been noted on the documents in lieu of 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 within the Excel file named “Labor and Labor Related Exhibit.” The “Public” CD-ROM contains identical Excel files to the .pdf versions of the workpapers that KAWC is filing via electronic upload 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.

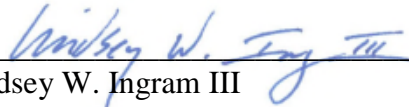
Date: February 12, 2016

Respectfully submitted,

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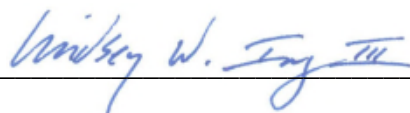
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CERTIFICATE

This certifies that Kentucky-American Water Company's electronic filing is a true and accurate copy of the documents to be filed in paper medium with the exception of documents for which confidential treatment is sought; that the electronic filing has been transmitted to the Commission on February 12, 2016; that a paper copy of the filing will be delivered to the Commission within two business days of the electronic filing; and that no party has been excused from participation by electronic means.

STOLL KEENON OGDEN PLLC

By: 

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