

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 PROTECTION AND REPLACEMENT OF
RESPONSES ON THE COMMISSION’S WEBSITE

Comes Kentucky-American Water Company (“KAWC” or “Company”), by counsel, pursuant to KRS 61.878 and 807 KAR 5:001, Sections 13 and 22, and requests confidential protection for four previously-filed data responses. KAWC further requests that the responses that are currently publicly available on the Commission’s website be replaced with the enclosed redacted responses. In further support of this Petition, KAWC states as follows.

In the Commission Staff’s Initial Request for Information No. 18, Staff requested that KAWC describe its incentive pay programs. When KAWC submitted its response on February 12, 2016, the Company explained that the brochure associated with the newly-announced Annual Performance Plan (“APP”) was not yet available, but would be filed with the Commission as soon as it was released. KAWC supplemented the response on April 15, 2016, and provided the 2016 APP brochure. Similarly, on April 25, 2016, KAWC likewise filed copies of the newly-announced Long Term Performance Plan (“LTPP”) brochure in response to Item No. 16 of the Commission’s Third Request for Information and Item No. 7 of the Attorney General’s Second Request for Information.

KAWC mistakenly filed the APP and LTPP brochures publicly. By this motion, KAWC requests that the brochures be removed from the public record and replaced with the public version of these data responses that are enclosed with this Petition. 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.

KAWC and American Water invested significant resources in having the new APP and LTP programs developed. The brochures provide a detailed summary of the plans, including the criteria, formulas, metrics, and other information that were developed in a proprietary manner on behalf of American Water. If competitors can access these new plans, such competitors would be able to implement these programs without incurring any resources to do so. Moreover, these brochures would provide competitors with critical insight into American Water's compensation philosophy and plans, which could harm the Company's ability to retain talented employees. The Commission has previously granted confidential protection to prior KAWC incentive plan brochures. See March 12, 2009 Letter from Jeff Derouen in Case No. 2008-00427.

KAWC also inadvertently filed confidential information in response to Item No. 5 of the Commission Staff's Initial Request for Information, which sought budget instructions, assumptions, directives, manuals, policies and procedures, time lines, and descriptions of budget procedures. In response, KAWC filed copies of PowerPoint presentations that contain confidential information such as financial strategies, pension expectations, and budget assumptions. KAWC requests that the response in the public record be replaced with the redacted version of the response attached hereto.

As with the APP and LTPP brochures, this information would provide competitors and vendors with material financial information, much of which was obtained through American

Water's investments and work. This information would provide third parties with an unfair advantage in dealing with KAWC and American Water.

KAWC requests that the information be held confidentially in perpetuity. KAWC cannot envision a period of time in which it would be appropriate for this confidential financial and budget information to be disclosed in the public realm.

The above description demonstrates that the information provided merits 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., 642 S.W.2d 591, 592-94 (Ky. App. 1982).

As stated above, KAWC mistakenly did not seek confidential protection of this information at the time the responses were filed. Pursuant to 807 KAR 5:001, Section 22, the Commission has the discretion to deviate from the normal confidentiality procedures for good cause. Given the nature of this information, KAWC respectfully requests the Commission to deviate from 807 KAR 5:001, Section 13 and remove the filed responses from the public record and replace those responses with those attached hereto that obscure the confidential information. KAWC has also provided confidential versions of the responses that denote the confidentiality of same.

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. KAWC further requests that the Commission replace the attached responses with those currently filed in the public record.

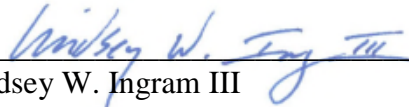
Date: June 29, 2016

Respectfully submitted,

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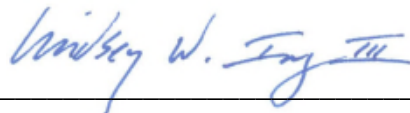
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By: 
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CERTIFICATE

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 June 29, 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: 

Attorneys for Kentucky-American Water Company