

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY-	)	
AMERICAN WATER COMPANY FOR AN	)	
ADJUSTMENT OF RATES, A CERTIFICATE OF	)	
PUBLIC CONVENIENCE AND NECESSITY FOR	)	CASE NO.
INSTALLATION OF ADVANCED METERING	)	2023-00191
INFRASTRUCTURE, APPROVAL OF	)	
REGULATORY AND ACCOUNTING	)	
TREATMENTS, AND TARIFF REVISIONS	)	

ORDER

On October 30, 2023, Kentucky-American Water Company (Kentucky-American) filed a motion, pursuant to KRS 278.400, requesting reconsideration of the Order entered October 10, 2023, regarding the July 18, 2023 petition for confidentiality requesting confidential treatment for current chemical prices.

LEGAL STANDARD

KRS 278.400, which establishes the standard of review for motions for rehearing, limits rehearing to new evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when “the evidence presented leaves no room for difference of opinion among reasonable minds.”<sup>1</sup>

---

<sup>1</sup> *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

An order can only be unlawful if it violates a state or federal statute or constitutional provision.<sup>2</sup>

By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order.

### MOTION

Kentucky-American requested that the Commission reconsider the denial of confidential treatment for designated information pertaining to present chemical prices contained in Kentucky-American's July 18, 2023 motion for confidential treatment. On October 10, 2023, the Commission granted confidential protection to forecasted chemical prices but denied confidential protection to present chemical prices because the present prices were a matter of public concern and denying confidential treatment would allow for the transparency necessary for Kentucky-American ratepayers to know the information relied upon in the Commission's final decision.<sup>3</sup>

In its motion, Kentucky-American argued that the Commission did not explain whether the disclosure of the present chemical pricing information would permit an unfair commercial advantage to competitors of the chemical suppliers but instead found that denying confidential treatment would allow the transparency necessary for Kentucky-

---

<sup>2</sup> *Public Service Comm'n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm'n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

<sup>3</sup> Order (Ky. PSC Oct. 10, 2023) at 3.

American ratepayers to know the information relied upon by in the Commission's final decision.<sup>4</sup> Kentucky-American argued that the Kentucky Open Records Act does not provide that the exception in KRS 61.878(1)(c)(1) only applies if the competitive harm outweighs the need for transparency, but applies any time competitive harm will result from public disclosure..<sup>5</sup>

Kentucky-American further argued that disclosure of present chemical pricing information would disadvantage American Water (Kentucky-American's parent company) customers across the country. Kentucky-American stated the present chemical pricing reflects negotiated rates that American Water had reached with chemical suppliers and that if this information was disclosed, chemical suppliers may be less willing to present low bids to American Water as it may damage the suppliers' relationships with its other customers if those customers learn about favorable pricing to American Water.<sup>6</sup>

Kentucky-American disagreed that the disclosure would undermine the transparency necessary for customers to know information relied upon by the Commission as the Attorney General (who by statute represents and advocates for customer interests) had access to the confidential information at all times.<sup>7</sup>

Additionally, Kentucky-American argued that American Water's Chemical Supply Contracts provide that pricing information should be kept confidential and that American Water's suppliers objected to the disclosure of the chemical pricing information.

---

<sup>4</sup> Motion for Reconsideration (filed Oct. 30, 2023) at 2.

<sup>5</sup> Motion for Reconsideration at 2.

<sup>6</sup> Motion for Reconsideration at 3.

<sup>7</sup> Motion for Reconsideration at 3.

Kentucky-American argued that because the pricing terms are confidential, negotiated terms, public disclosure of present chemical pricing permits an exceptionally unfair commercial advantage to competitors of Kentucky-American's chemical suppliers.<sup>8</sup>

### DISCUSSION AND FINDINGS

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that Kentucky-American's motion for reconsideration should be granted because the Commission did not address whether the present chemical pricing information would permit an unfair commercial advantage as provided in KRS 61.878(1)(c)(1).

The Commission further finds that the present chemical pricing information should be granted confidential treatment and exempted from public disclosure under KRS 61.878(1)(c)(1) because it would permit an unfair commercial advantage to Kentucky-American by providing future suppliers with the current price Kentucky-American pays for chemicals, which could put Kentucky-American at a disadvantage in future price negotiations for chemicals and negatively impact ratepayers. The total amount spent on chemicals for the test year was provided along with the forecasted total amount which allows for the transparency necessary for Kentucky-American's ratepayers. Additionally, the Commission previously granted confidential protection to the past and current chemical prices listed in the testimony of Thomas O'Drain, which contains a portion of the current chemical prices listed in Kentucky-American's July 18, 2023 petition for confidential treatment.

---

<sup>8</sup> Motion for Reconsideration at 3-4.

IT IS THEREFORE ORDERED that:

1. Kentucky-American's motion for reconsideration is granted.
2. Kentucky-American's request that present chemical prices listed in its response to Staff's First Request Item No. 1 are granted confidential treatment.
3. The remainder of the October 10, 2023 Order not in conflict with this Order remains in effect.
4. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for five years or until further Order of this Commission.
5. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).
6. Kentucky-American shall inform the Commission if the designated material granted confidential treatment becomes publicly available or no longer qualifies for confidential treatment.
7. In a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, Kentucky-American shall have 30 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.
8. The Commission shall not make the requested material for which confidential treatment was granted available for inspection for 30 days from the date of

service of 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner



ATTEST:

  
Executive Director

\*Angela M Goad  
Assistant Attorney General  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*Larry Cook  
Assistant Attorney General  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*Honorable David J. Barberie  
Managing Attorney  
Lexington-Fayette Urban County Government  
Department Of Law  
200 East Main Street  
Lexington, KENTUCKY 40507

\*Mary Ellen Wimberly  
STOLL KEENON OGDEN PLLC  
300 West Vine Street  
Suite 2100  
Lexington, KENTUCKY 40507-1801

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

\*J. Michael West  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*Jeffrey Newcomb  
Kentucky-American Water Company  
2300 Richmond Road  
Lexington, KY 40502

\*Monica Braun  
STOLL KEENON OGDEN PLLC  
300 West Vine Street  
Suite 2100  
Lexington, KENTUCKY 40507-1801

\*James W Gardner  
Sturgill, Turner, Barker & Moloney, PLLC  
333 West Vine Street  
Suite 1400  
Lexington, KENTUCKY 40507

\*Rebecca C. Price  
Sturgill, Turner, Barker & Moloney  
155 East Main Street  
Lexington, KENTUCKY 40507

\*John G Horne, II  
Office of the Attorney General Office of Rate  
700 Capitol Avenue  
Suite 20  
Frankfort, KENTUCKY 40601-8204

\*Susan Speckert  
Lexington-Fayette Urban County Government  
Department Of Law  
200 East Main Street  
Lexington, KENTUCKY 40507

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

\*M. Todd Osterloh  
Sturgill, Turner, Barker & Moloney, PLLC  
333 West Vine Street  
Suite 1400  
Lexington, KENTUCKY 40507