



MEMORANDUM

Date: May 22, 2012

To: Public Service Commission

From: Mary L. Myers

Subject: The Joint Application of Nuon Global Solutions)
USA, BV, Nuon Global Solutions USA, Inc.,)
AIG Highstar Capital II, LP, Hydro Star, LLC)
Utilities, Inc., and Water Service Corporation) Case No. 2005-00433
of Kentucky for Approval of an Indirect Change)
in Control of a Certain Kentucky Utility Pursuant)
to the Provisions of KRS 278.020(5) and (6) and)
807 KAR 5:001, Section 8)

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MAY 23 2012

PUBLIC SERVICE
COMMISSION

Comments:

Enclosed please find the original and 11 copies of the Response to Order Dated March 8, 2006 filed on behalf of Water Service Corporation of Kentucky and a Petition for Confidentiality also filed on behalf of Water Service Corporation of Kentucky. We ask that the extra copies of the Response and Petition be file-stamped and returned to us in the envelope provided. Thank you for your assistance.

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RECEIVED

MAY 23 2012

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

The Joint Application of Nuon Global Solutions)
USA, BV, Nuon Global Solutions USA, Inc.,)
AIG Highstar Capital II, LP, Hydro Star, LLC)
Utilities, Inc., and Water Service Corporation)
of Kentucky for Approval of an Indirect Change)
in Control of a Certain Kentucky Utility Pursuant)
to the Provisions of KRS 278.020(5) and (6) and)
807 KAR 5:001, Section 8)

Case No. 2005-00433

RESPONSE TO ORDER DATED MARCH 8, 2006

On March 8, 2006, the Commission approved the Joint Applicants' application for approval of an indirect transfer of control of Water Service Corporation of Kentucky ("Water Service"). In approving the transfer, the Commission ordered:

11. Water Service shall, for calendar year 2006 and for the next 5 years thereafter, include with its annual report to the Commission a table that shows each water quality standard imposed by law, the number of water service interruptions, the average employee response time to water service interruptions, the number of customer complaints, and the customer inquiry response time for each calendar year from 2006.

12. Water Service shall annually file with the Commission its current 2-year capital and operation and maintenance budgets and an explanation for any reduction in a budgeted item.

Water Service complied with ordering paragraph 11 when filing its 2006 annual report. It, however, inadvertently failed to file subsequent reports as directed by these two ordering paragraphs. On realizing its error, Water Service notified Commission Staff in March 2012 of its failure. It requested to meet with Commission Staff to provide information related to the items discussed in the ordering paragraphs and respond to questions of Commission Staff. A meeting was held on April 2, 2012, at which representatives of Water Service (and its parent Utilities,

Inc.), Commission Staff, and the Attorney General's ("AG") Office participated. During the meeting, Commission Staff and the AG's representatives identified additional information that they requested to supplement the information that was provided by Water Service. Commission Staff also suggested that this information be filed in the record of Case No. 2005-00433. The following information is responsive to both the Commission's Order dated March 8, 2006, and information identified at the April 2, 2012, meeting. Exhibits 1a, 1b, 2a, and 2b were provided to Commission Staff prior to the April 2, 2012, meeting.¹

Exhibit 1a provides the water quality standards imposed by law for Water Service's operations in Bell and Hickman Counties. During the meeting, the AG's representative requested information as to whether the utility was on track to comply with the Environmental Protection Agency's Stage 2 Disinfection Byproducts ("DBP") Rule. Water Service is compliant with the current requirements of the DBP rule. Based upon the system size, the Stage 2 DBP Rule requires that the Water Service system for Middlesboro begin compliance monitoring by October 1, 2013 and for Clinton begin compliance monitoring by October 1, 2014. In addition, the testing results from 2009-2011 for the Middlesboro system are attached as Exhibit 3. The Water Service systems are already in compliance with the Stage 2 DBP Rule.

Exhibit 1b provides the number of water service interruptions, the average employee response time to water service interruptions, the number of customer complaints, and the customer inquiry response time for each calendar year from 2006 to 2011. Although not indicated on the chart, there were 11 water service interruptions in 2006.

Based upon the available information, along with communications with the local management staff of Water Service, the average response time to water service interruptions would be 20-30 minutes. This is based upon the Water Service staff and geographic locations of

¹ Because these exhibits were previously provided to the Commission Staff and the AG's Office without having been filed in the record of this case, Water Service has herein identified these exhibits with the same numbers. Exhibits 3-5 provide additional information that was not previously provided.

their residences. Approximately half of the Water Service field technical staff that respond to water service interruptions live within the Clinton or Middlesboro city limits, while the remainder of the staff lives between and three and six miles of our service territory. While some response times would be almost immediate, others would be dependent upon the minimal travel time associated with responding.

The AG's representative requested additional data on the number of customer complaints that were related to items other than water service interruptions. Water Service agreed to provide that data and additional source files that explain the nature of the each concern. A data summary is provided in Exhibit 4. It should be noted that the data provided in this summary does not necessarily relate to a "complaint" by a customer; instead, it includes any instance in which a customer contacted the utility. The source files provide individualized information about each time a customer contacted the utility. Because the source files contain sensitive information, they are being contemporaneously filed with a petition for confidential treatment.

Exhibit 2a provides the capital budget for the years 2008-2012. Although information dating from 2006 was requested, Water Service's parent company, Utilities, Inc., did not prepare subsidiary-specific capital budgets until 2008. Exhibit 2b provides the operations and maintenance budgets for the years 2010-2012. Utilities, Inc., did not prepare subsidiary-specific operations and maintenance budgets until 2010.

In response to the information discussed at the April 2, 2010, meeting, Water Service was requested to provide a description of how the Operations and Maintenance budget is created annually and an explanation in the decrease in budget from year-to-year for categories for which an explanation is not readily apparent. The Operations and Maintenance budget is created using a combination of averages of prior year "actual" expenditures, adjusted for current expectations of changes in revenues and expenses – e.g., price/rate increases, wage adjustments, changes in

the customer base, changes in operating processes, changes in the environment/treatment processes, and use of more efficient vehicles. Exhibit 5 contains the same information as provided for in Exhibit 2b, and it also explains decreases in certain item's budgets from year to year.

Water Service's failure to provide the information requested in the Commission's March 8, 2006, was inadvertent. The company and its affiliates certainly had no intention of failing to file the requested information and did not deliberately evade the Commission's orders. In 2011 Utilities, Inc., implemented certain procedures to safeguard against similar oversights in the future for all its regulated utility subsidiaries. At the end of each regulatory process (e.g., rate or transfer cases), the respective regional regulatory accounting manager is now required to prepare a closing memo describing the specifics of the case, any future deliverables, docket the due dates and assign a responsible party. These action dates are docketed on a tracking calendar, which can be accessed by any company employee to view regulatory deadlines. In addition, the company's Executive Director of Regulatory Accounting and Affairs now meets with regional regulatory accounting managers once a week to review deliverables and deadlines for the week. Utilities, Inc., put these processes in place to prevent these types of inadvertent omissions from happening in the future.

Respectfully submitted,



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ATTORNEY FOR WATER SERVICE CORPORATION

CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing will be served via First Class Mail, postage prepaid, this the 22nd day of May, 2012, to the following:

David Spenard, Assistant Attorney General
Office of the Attorney General
1024 Capitol Center Drive, Suite 200
Frankfort, Kentucky 40601



ATTORNEY FOR WATER SERVICE CORPORATION

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Drinking Water Branch

Sample Schedules

Water System No. :	KY0070282	Federal Type :	C
Water System Name :	WATER SERVICE CORPORATION OF KENTUCKY	State Type :	C
Principal County Served :	BELL	Primary Source :	SW
Status :	A	Activity Date :	01-01-1973

TCR Schedules

Sample Count	Sample Type	Sample Frequency	Effective Begin Date	Effective End Date	Seasonal Start MM/DD	Seasonal End MM/DD	Analyte Code	Analyte Name
20	RT	MN	01-01-1991		1/1	12/31	3100	COLIFORM (TCR)
3	RP	DL	09-07-2011	09-21-2011	9/7	9/21	3100	COLIFORM (TCR)
3	RP	DL	09-09-2011	09-23-2011	9/9	9/23	3100	COLIFORM (TCR)

Total Number of Records Fetched = 3

Frequent Field Sample Schedules

Water System Facility State Asgn ID	Water System Facility Name	Analyte Code	Analyte Name	Days to Monitor per month	Samples Required per day	Effective Begin Date	Effective End Date	Summary Type
0070282TPA	MIDDLESBORO WTP	0999	CHLORINE	31	1	01-01-2002		EPRD
0070282TPA	MIDDLESBORO WTP	0100	TURBIDITY	31	6	01-01-2002		MAXT
0070282DS001	DISTRIBUTION - WATER SERVICE CORP. OF KY	0999	CHLORINE	31	1	01-01-2002		SDRD
0070282TPA	MIDDLESBORO WTP	0100	TURBIDITY	31	6	01-01-2002		95PT

Total Number of Records Fetched = 4

Non-TCR Group Schedules

Water System Facility State Asgn ID	Water System Facility Name	Analyte Group Code	Analyte Group Name	Sample Count	Sample Type	Sample Frequency	Effective Begin Date	Effective End Date	Seasonal Start MM/D	Seasonal End MM/D
0070282DS001	DISTRIBUTION - WATER SERVICE CORP. OF KY	<u>PBCU</u>	LEAD & COPPER TAP	30	RT	3Y	01-01-2012		6/1	9/30
0070282DS001	DISTRIBUTION - WATER SERVICE CORP. OF KY	<u>PBCU</u>	LEAD & COPPER TAP	30	RT	3Y	01-01-2009	12-31-2011	6/1	9/30
0070282DS001	DISTRIBUTION - WATER SERVICE CORP. OF KY	<u>DBPS</u>	TTHM THAA	4	RT	QT	01-01-2002	10-01-2013	0/0	0/0
0070282IN001	INTAKE - FERN LAKE	<u>TOCA</u>	PRECUSOR RAW SCH	1	RT	MN	01-01-2004		0/0	0/0
0070282TPA	MIDDLESBORO WTP	<u>RADA</u>	RADA	1	RT	YR	01-01-2017	12-31-2017	0/0	0/0
0070282TPA	MIDDLESBORO WTP	<u>IOCS</u>	REG IOC	1	RT	YR	01-01-2002		0/0	0/0
0070282TPA	MIDDLESBORO WTP	<u>SOCS</u>	REG SOC W/O DIOXIN	2	RT	3Y	01-01-2002		0/0	0/0
0070282TPA	MIDDLESBORO WTP	<u>VOCS</u>	REG VOC	1	RT	YR	01-01-2002		0/0	0/0
0070282TPA	MIDDLESBORO WTP	<u>SCND</u>	SECONDARY	1	RT	YR	01-01-2010		0/0	0/0
IDSE1102	IDSE - WATER SERVICE CORP OF KENTUCKY	<u>DBPS</u>	TTHM THAA	4	RT	QT	10-01-2013		0/0	0/0

Total Number of Records Fetched = 10

Non-TCR Individual Schedules

Water System Facility State Asgn ID	Water System Facility Name	Analyte Code	Analyte Name	Sample Count	Sample Type	Sample Frequency	Effective Begin Date	Effective End Date	Seasonal Start MM/D	Seasonal End MM/D
0070282DS001	DISTRIBUTION - WATER SERVICE CORP. OF KY	1094	ASBESTOS	1	RT	3Y	01-01-2011	12-31-2013	0/0	0/0
0070282TPA	MIDDLESBORO WTP	2063	2,3,7,8-TCDD	2	RT	3Y	01-01-2014		0/0	0/0
0070282TPA	MIDDLESBORO WTP	2982	CARBON TETRACHLORIDE	1	RT	YR	01-01-2007		4/1	6/30
0070282TPA	MIDDLESBORO WTP	2920	CARBON, TOTAL	1	RT	MN	01-01-2004		0/0	0/0
0070282TPA	MIDDLESBORO WTP	1040	NITRATE	1	RT	YR	01-01-2002		0/0	0/0
0070282TPA	MIDDLESBORO WTP	1041	NITRITE	1	RT	3Y	01-01-2011	12-31-2013	0/0	0/0
0070282TPA	MIDDLESBORO WTP	1052	SODIUM	1	RT	YR	01-01-2009		0/0	0/0

Total Number of Records Fetched = 7

Drinking Water Branch

Sample Schedules

Water System No. :	KY0530077	Federal Type :	C
Water System Name :	WATER SERVICE CORP OF KENTUCKY	State Type :	C
Principal County Served :	HICKMAN	Primary Source :	GW
Status :	A	Activity Date :	01-01-1973

TCR Schedules

Sample Count	Sample Type	Sample Frequency	Effective Begin Date	Effective End Date	Seasonal Start MM/DD	Seasonal End MM/DD	Analyte Code	Analyte Name
2	RT	MN	01-01-1991		1/1	12/31	3100	COLIFORM (TCR)

Total Number of Records Fetched = 1

Frequent Field Sample Schedules

Water System Facility State Asgn ID	Water System Facility Name	Analyte Code	Analyte Name	Days to Monitor per month	Samples Required per day	Effective Begin Date	Effective End Date	Summary Type
0530077TPA	DEEP WELLS WTP	0999	CHLORINE	31	1	12-01-2009		EPRD
0530077DS001	DISTRIBUTION - WATER SERVICE CORP. OF KY	0999	CHLORINE	31	1	01-01-2002		SDRD

Total Number of Records Fetched = 2

Non-TCR Group Schedules

Water System Facility State Asgn ID	Water System Facility Name	Analyte Group Code	Analyte Group Name	Sample Count	Sample Type	Sample Frequency	Effective Begin Date	Effective End Date	Seasonal Start MM/DD	Seasonal End MM/DD
0530077DS001	DISTRIBUTION - WATER SERVICE CORP. OF KY	PBCU	LEAD & COPPER TAP	10	RT	3Y	01-01-2011		6/1	9/30
0530077DS001	DISTRIBUTION - WATER SERVICE CORP. OF KY	DBPS	TTHM THAA	1	RT	YR	01-01-2002		7/1	9/30
0530077TPA	DEEP WELLS WTP	RADA	RADA	1	RT	YR	01-01-2013	12-31-2013	0/0	0/0
0530077TPA	DEEP WELLS WTP	IOCS	REG IOC	1	RT	3Y	01-01-2002		0/0	0/0
0530077TPA	DEEP WELLS WTP	SOCS	REG SOC W/O DIOXIN	1	RT	3Y	01-01-2002		0/0	0/0
0530077TPA	DEEP WELLS WTP	VOCS	REG VOC	1	RT	3Y	01-01-2002		0/0	0/0
0530077TPA	DEEP WELLS WTP	SCND	SECONDARY	1	RT	YR	01-01-2010		0/0	0/0

Total Number of Records Fetched = 7

Non-TCR Individual Schedules

Water System Facility State Asgn ID	Water System Facility Name	Analyte Code	Analyte Name	Sample Count	Sample Type	Sample Frequency	Effective Begin Date	Effective End Date	Seasonal Start MM/DD	Seasonal End MM/DD
0530077DS001	DISTRIBUTION - WATER SERVICE CORP. OF KY	1094	ASBESTOS	1	RT	3Y	01-01-2011	12-31-2013	0/0	0/0
0530077TPA	DEEP WELLS WTP	1040	NITRATE	1	RT	YR	01-01-2002		0/0	0/0
0530077TPA	DEEP WELLS WTP	1041	NITRITE	1	RT	3Y	01-01-2011	12-31-2013	0/0	0/0
0530077TPA	DEEP WELLS WTP	1052	SODIUM	1	RT	3Y	01-01-2008		0/0	0/0

Total Number of Records Fetched = 4

Water Service Corporation of Kentucky
 Case No. 2005-00433
 Certain Requirements from Appendix A
 Dated March 8, 2006

Title	2006	2007	2008	2009	2010	2011
Water Service Interruptions	*	2	0	7	7	4
Avg Employee Response Time	N/A	20-30 mins	N/A	20-30 mins	20-30 mins	20-30 mins
Number of Customer Complaints	4	0	0	0	2	1
Customer Inquiry Response Time	< 1 day	N/A	N/A	N/A	< 1 day	< 1 day

*WSC of KY locating data

Water Service Corporation of Kentucky
Case No. 2005-00433
Certain Requirements from Appendix A
Dated March 8, 2006

ProjType	Project Name	2008 Budget	2009 Budget	2010 Budget	2011 Budget	2012 Budget
Projects >50k	Auto Meter Read Install	\$ -	\$ -	\$ -	\$ -	\$ -
Projects >50k	Replace Water Main on Alpine Road	-	-	-	-	60,000
Cap Time	CAP TIME	128,599	\$ 40,000	60,000	60,000	60,100
GL Spending	G/L ADDITIONS	213,000	\$ 38,000	80,000	80,000	80,000
Info Tech	IT	5,455	-	-	-	-
Transportation	TRANSPORTATION	-	-	28,000	70,000	-
Total		\$ 347,054	\$ 78,000	\$ 168,000	\$ 210,000	\$ 200,100

Note: WSC of KY's parent company didn't start preparing company specific cap ex budgets until 2008.

Water Service Corporation of Kentucky
Case No. 2005-00433
Certain Requirements from Appendix A
Dated March 8, 2006

Item	2006	2007	2008	2009	2010	2011	2012
PURCHASED WATER EXPENSE	N/A	N/A	N/A	N/A	85,200	85,200	85,200
ELEC PWR - WATER SYSTEM	N/A	N/A	N/A	N/A	97,201	72,000	80,475
ELEC PWR - SWR SYSTEM	N/A	N/A	N/A	N/A	7,477	9,900	13,025
ELEC PWR - OTHER	N/A	N/A	N/A	N/A	-	-	-
CHEMICALS	N/A	N/A	N/A	N/A	128,807	118,200	132,400
METER READING	N/A	N/A	N/A	N/A	3,715	-	-
BAD DEBT EXPENSE	N/A	N/A	N/A	N/A	46,699	21,322	37,864
BILLING & CUSTOMER SERVICE EXPENSE	N/A	N/A	N/A	N/A	2,406	2,200	2,000
EMPLOYEE BENEFITS	N/A	N/A	N/A	N/A	55	-	240
INSURANCE EXPENSE	N/A	N/A	N/A	N/A	1,996	-	-
MISCELLANEOUS EXPENSE	N/A	N/A	N/A	N/A	12,954	8,130	6,570
OFFICE EXPENSE	N/A	N/A	N/A	N/A	29,193	16,000	8,100
OFFICE UTILITIES/MAINTENANCE	N/A	N/A	N/A	N/A	68,908	22,660	17,950
OUTSIDE SERVICE EXPENSE	N/A	N/A	N/A	N/A	3,801	-	4,200
REGULATORY COMMISSION EX	N/A	N/A	N/A	N/A	49,853	53,527	123,742
RENT EXPENSE	N/A	N/A	N/A	N/A	4,932	10,920	3,720
SALARIES & WAGES	N/A	N/A	N/A	N/A	299,840	412,924	365,904
TRAVEL EXPENSE	N/A	N/A	N/A	N/A	7,749	6,120	5,000
FLEET TRANSPORTATION EXP	N/A	N/A	N/A	N/A	177,804	40,200	52,434
MAINTENANCE TESTING	N/A	N/A	N/A	N/A	40,012	28,800	27,900
MAINTENANCE-WATER PLANT	N/A	N/A	N/A	N/A	39,739	53,000	43,600
MAINTENANCE-SEWER PLANT	N/A	N/A	N/A	N/A	6,364	5,100	5,100
MAINTENANCE-WTR&SWR PLAN	N/A	N/A	N/A	N/A	78,539	12,780	12,795
SEWER RODDING	N/A	N/A	N/A	N/A	6,145	7,200	7,200
SLUDGE HAULING	N/A	N/A	N/A	N/A	29,064	-	-
Total					1,228,453	986,183	1,035,418

Note: WSC of KY's parent company didn't start preparing company specific O&M budgets until 2010

Stage I Disinfection By-Products - WSCK - Middlesboro KY-PWSID #KY0070282

	TTHM/MCL 0.080 PPM	HAA/MCL 0.060 PPM
1st Quarter 2009	024 - Dairy Mart 0.021 PPM 119 - City BP 0.021 PPM 014 - Conley's 0.0243 PPM TPA Plant Tap 0.0225 PPM 120 - Krystal's 0.0237 PPM	024 - Dairy Mart 0.014 PPM 119 - City BP 0.015 PPM 014 - Conley's 0.013 PPM TPA Plant Tap 0.013 PPM 120 - Krystal's 0.015 PPM
2nd Quarter 2009	024 - Dairy Mart 0.024 PPM 119 - City BP 0.024 PPM 014 - Conley's 0.0261 PPM TPA Plant Tap 0.0259 PPM 120 - Krystal's 0.0274 PPM	024 - Dairy Mart 0.016 PPM 119 - City BP 0.016 PPM 014 - Conley's 0.016 PPM TPA Plant Tap 0.016 PPM 120 - Krystal's 0.019 PPM
3rd Quarter 2009	024 - Dairy Mart 0.0473 PPM 119 - City BP 0.049 PPM 014 - Conley's 0.0475 PPM TPA Plant Tap 0.040 PPM 120 - Krystal's 0.045 PPM	024 - Dairy Mart 0.042 PPM 119 - City BP 0.044 PPM 014 - Conley's 0.044 PPM TPA Plant Tap 0.037 PPM 120 - Krystal's 0.042 PPM
4th Quarter 2009	024 - Dairy Mart 0.0324 PPM 119 - City BP 0.0313 PPM 014 - Conley's 0.0327 PPM TPA Plant Tap 0.025 PPM 120 - Krystal's 0.035 PPM	024 - Dairy Mart 0.037 PPM 119 - City BP 0.035 PPM 014 - Conley's 0.032 PPM TPA Plant Tap 0.030 PPM 120 - Krystal's 0.043 PPM

Stage I Disinfection By-Products - WSCK - Middlesboro KY-PWSID #KY0070282

	TTHM/MCL 0.080 PPM	HAA/MCL 0.060 PPM
1st Quarter 2010	024 - Dairy Mart 0.0148 PPM 119 - City BP 0.0152 PPM 014 - Conley's 0.0155 PPM TPA Plant Tap 0.0146 PPM 120 - Krystal's 0.0158 PPM	024 - Dairy Mart 0.038 PPM 119 - City BP 0.037 PPM 014 - Conley's 0.039 PPM TPA Plant Tap 0.040 PPM 120 - Krystal's 0.041 PPM
2nd Quarter 2010	024 - Dairy Mart 0.0164 PPM 119 - City BP 0.0158 PPM 014 - Conley's 0.0174 PPM TPA Plant Tap 0.0150 PPM 120 - Krystal's 0.016 PPM	024 - Dairy Mart 0.017 PPM 119 - City BP 0.020 PPM 014 - Conley's 0.018 PPM TPA Plant Tap 0.017 PPM 120 - Krystal's 0.020 PPM
3rd Quarter 2010	024 - Dairy Mart 0.053 PPM 119 - City BP 0.051 PPM 014 - Conley's 0.0469 PPM TPA Plant Tap 0.0556 PPM 120 - Krystal's 0.057 PPM	024 - Dairy Mart 0.026 PPM 119 - City BP 0.028 PPM 014 - Conley's 0.026 PPM TPA Plant Tap 0.026 PPM 120 - Krystal's 0.029 PPM
4th Quarter 2010	024 - Dairy Mart 0.031 PPM 119 - City BP 0.0404 PPM 014 - Conley's 0.0346 PPM TPA Plant Tap 0.0363 PPM 120 - Krystal's 0.0327 PPM	024 - Dairy Mart 0.015 PPM 119 - City BP 0.017 PPM 014 - Conley's 0.015 PPM TPA Plant Tap 0.015 PPM 120 - Krystal's 0.014 PPM

Stage I Disinfection By-Products - WSCK - Middlesboro KY-PWSID #KY0070282

	TTHM/MCL 0.080 PPM	HAA/MCL 0.060 PPM
1st Quarter 2011	024 - Dairy Mart 0.0124 PPM 119 - City BP 0.012 PPM 014 - Conley's 0.0127 PPM TPA Plant Tap 0.0101 PPM 120 - Krystal's 0.0051 PPM	024 - Dairy Mart 0.021 PPM 119 - City BP 0.021 PPM 014 - Conley's 0.024 PPM TPA Plant Tap 0.023 PPM 120 - Krystal's 0.026 PPM
2nd Quarter 2011	024 - Dairy Mart 0.0191 PPM 119 - City BP 0.0184 PPM 014 - Conley's 0.0170 PPM TPA Plant Tap 0.0175 PPM 120 - Krystal's 0.0209 PPM	024 - Dairy Mart 0.022 PPM 119 - City BP 0.021 PPM 014 - Conley's 0.019 PPM TPA Plant Tap 0.021 PPM 120 - Krystal's 0.022 PPM
3rd Quarter 2011	024 - Dairy Mart 0.0200 PPM 119 - City BP 0.0196 PPM 014 - Conley's 0.0182 PPM TPA Plant Tap 0.0176 PPM 120 - Krystal's 0.0206 PPM	024 - Dairy Mart 0.025 PPM 119 - City BP 0.026 PPM 014 - Conley's 0.024 PPM TPA Plant Tap 0.023 PPM 120 - Krystal's 0.025 PPM
4th Quarter 2011	024 - Dairy Mart 0.0323 PPM 119 - City BP 0.0312 PPM 014 - Conley's 0.0382 PPM TPA Plant Tap 0.0318 PPM 120 - Krystal's 0.0316 PPM	024 - Dairy Mart 0.015 PPM 119 - City BP 0.015 PPM 014 - Conley's 0.016 PPM TPA Plant Tap 0.014 PPM 120 - Krystal's 0.020 PPM

	2008	2009	2010	2011	2012	Grand Total
Air in Water	7			1		8
Clogged Sewer			10	8	6	24
Discolored Water	11	2	10	13	7	43
High Bill	1	14	264	276	58	613
High or Low Pressure in the Water	13	19	14	22	5	73
Lawn Repair for Water Breaks	17		1	1		19
Mineral Amount in Water				1		1
Misc. Customer Contact	110	1,025	3,406	7,470	2,267	14,278
No Water	7	9	24	33	20	93
Odor in Sewer			1	1		2
Repair Road	2	1		1		4
Repair/Replace Meter Box	18	40	14	17	7	96
Sewer Miscellaneous Complaint				2	1	3
Sewer Service Line Break			2		2	4
Taste or Odor in the Water	2	3	1	2		8
Water Main Break	24	15	8	4	2	53
Water Miscellaneous Complaint	16	8	3	11	4	42
Water Quality	7	1	1		1	10
Water Service Line Break	43	26	35	33	12	149
Grand Total	278	1,163	3,794	7,896	2,392	15,523

Exhibit 4

Water Service Corporation of Kentucky
Response to Data Request Item #4
Budgeted expenses for the 2010, 2011 and 2012 Fiscal Year

<u>Line</u>	<u>Item</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
1.	PURCHASED WATER EXPENSE	85,200	85,200	85,200
2.	PURCHASED SEWER TREATMENT	-	-	-
3.	ELEC PWR - WATER SYSTEM	97,201	72,000 [2]	80,475
4.	ELEC PWR - SWR SYSTEM	7,477	9,900	13,025
5.	ELEC PWR - OTHER	-	-	-
6.	CHEMICALS	128,807	118,200	132,400
7.	METER READING	3,715	-	-
8.	BAD DEBT EXPENSE	46,699	21,322 [2]	37,864 [2]
9.	BILLING & CUSTOMER SERVICE EXPENSE	2,406	2,200	2,000 [2]
10.	EMPLOYEE BENEFITS	55	-	240
11.	INSURANCE EXPENSE	1,996	-	-
12.	IT DEPARTMENT	-	-	-
13.	MISCELLANEOUS EXPENSE	12,954	8,130 [2]	6,570 [2]
14.	OFFICE EXPENSE	29,193	16,000 [2]	8,100 [2]
15.	OFFICE UTILITIES/MAINTENANCE	68,908	22,660 [2]	17,950 [2]
16.	OUTSIDE SERVICE EXPENSE	3,801	-	4,200
17.	REGULATORY COMMISSION EX	49,853	53,527	123,742
18.	RENT EXPENSE	4,932	10,920	3,720 [3]
19.	SALARIES & WAGES	299,840	412,924	365,904 [2]
20.	TRAVEL EXPENSE	7,749	6,120 [2]	5,000 [2]
21.	FLEET TRANSPORTATION EXP	177,804	40,200	52,434
22.	MAINTENANCE TESTING	40,012	28,800 [2]	27,900 [2]
23.	MAINTENANCE-WATER PLANT	39,739	53,000 [1]	43,600 [2]
24.	MAINTENANCE-WTR&SWR PLAN	78,539	12,780 [2]	12,795
25.	SLUDGE HAULING	29,064 [1]	-	-

[1] Sludge hauling is now budgeted for in the Maintenance - Water plant line item

[2] The O&M budget is created using a combination of averages of prior year "actual" expenditures, adjusted for current expectations of changes in revenues and expenses these decreases are a result of actual expenses for the prior year coming in under budget.

[3] The Company terminated the lease for its Cumberland Ave. office space.

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

The Joint Application of Nuon Global Solutions)
USA, BV, Nuon Global Solutions USA, Inc.,)
AIG Highstar Capital II, LP, Hydro Star, LLC)
Utilities, Inc., and Water Service Corporation)
of Kentucky for Approval of an Indirect Change)
in Control of a Certain Kentucky Utility Pursuant)
to the Provisions of KRS 278.020(5) and (6) and)
807 KAR 5:001, Section 8)

Case No. 2005-00433

RECEIVED

MAY 23 2012

PUBLIC SERVICE
COMMISSION

PETITION FOR CONFIDENTIALITY

Water Service Corporation of Kentucky (“Water Service”), by counsel, pursuant to 807 KAR 5:001, Section 7, respectfully requests the Public Service Commission to grant confidential protection to the source files indicating the nature of all contacts by Water Service customers, which were requested by Commission Staff and representatives of the Office of the Attorney General at a meeting held on April 2, 2012. In support of this request, Applicants state as follows:

Administrative Regulation 807 KAR 5:001, Section 7(2) sets forth a procedure by which certain information filed with the Commission shall be treated as confidential. Specifically, the party seeking confidential treatment must set “forth specific grounds pursuant to KRS 61.870 et seq., the Kentucky Open Records Act, upon which the commission should classify that material as confidential.” 807 KAR 5:001, Section 7(2)(a)(1). The Kentucky Open Records Act exempts certain records from the requirement of public inspection. *See* KRS 61.878. In particular, KRS 61.878(1)(a) exempts from disclosure the following: “Public records containing information of a

personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” In enacting this provision, the General Assembly acknowledged “that personal privacy is of legitimate concern and worthy of protection from invasion by unwarranted public scrutiny.” *Kentucky Bd. of Exam'rs of Psychologists v. Courier-Journal*, 826 S.W.2d 324, 327 (Ky. 1992).

In determining whether information qualifies for the “personal nature” exemption, one must first confirm whether the information is, in fact, of a personal nature. *Lexington H-L Services, Inc. v. Lexington-Fayette Urban County Gov't*, 297 S.W.3d 579, 584 (Ky. App. 2009). Once it is determined that the information is of a personal nature, a reviewing body must weigh the privacy interests of the person to which the information relates and the public interest in disclosure of the information. *See id.* In considering the public interest in disclosure of certain information, the focus is placed on whether the information would be necessary to ensure that a governmental agency is properly executing its statutory duties. *See Zink v. Commonwealth*, 902 S.W.2d 825, 828-29 (Ky. App. 1994) (quoting *Dept. of Justice v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 774-75 (1989)).

The source files include addresses, phone numbers, marital status of customers, emergency contacts, billing information, payment plan information, entities providing payment assistance to specific customers, customers’ personal projects that impeded the utility’s ability to provide service, the condition of customers’ service lines, whether debit cards were declined, and other personal information. This information is undoubtedly the type of information that the General Assembly intended on protecting from public disclosure.

The Supreme Court has previously held that addresses and phone numbers are entitled to protection under KRS 61.878(1)(a). *See Zink*, 902 S.W.2d at 829. In the same opinion, the

Court explained the privacy interests in social security numbers and emphasized that “few things in our society are deemed of a more intimate nature than one’s income.” *Id.* Thus, information on billings, payment plans, and the receipt of financial assistance is undoubtedly protected by the statute. *See also* 11-ORD-196 (Nov. 21, 2011)(reaffirming its previous position that specific utility billing information, which identifies individual users and their individual water and sewer usage, is protected under the Open Records Act)(copy attached). The opinions discussing the personal nature exemption to the Open Records Act support a finding that the information contained in the source files should be treated confidential by the Commission.

In addition to information of a personal nature, the statute protects exempts from disclosure the following:

Records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would present an unfair commercial advantage to competitors of the entity that disclosed the records.

KRS 61.878(1)(c)(1). The source files contain information as to how Water Service responds to customer inquiries. Disclosure of this type of information would provide an unfair commercial advantage to competitors of Water Service and its corporate family.

To the extent necessary, Water Service seeks a deviation from 807 KAR 5:001, Section 7. This regulation envisions confidential information to be redacted from documents filed with the Commission so as to allow a redacted version to be retained in the public file. The source files contain 15,524 individual entries, a vast majority of which contain information of a personal nature or information that, if disclosed, would present an unfair commercial advantage to competitors. As such, the time-consuming redaction process would be unduly burdensome and would not provide any benefit to the public. Accordingly, Water Service seeks a deviation from

the regulation to allow for blanket confidential protection of the entire document containing the source files.

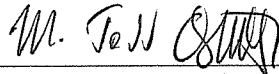
The aforementioned regulation also requires paper copies of the information to be provided to the Commission. Because of the volume of information provided for each customer contact, the most effective and efficient vehicle for reviewing the information is via electronic viewing on Microsoft Excel. Printed copies of this information are difficult to read because, when the information printed in large enough font to read, one entry spans multiple pages. Accordingly, Water Service seeks a deviation from 807 KAR 5:001, Section 7, so as to authorize the filing of this information on compact disc, rather than a paper copy. (Two compact discs have been filed with this petition—(a) one to be placed directly in the confidential file and (b) one to be circulated with this petition to the Commission and Staff while the decision on this petition is pending and, once a decision is made, to be included in the confidential file.)

Water Service will make these source files available to the Attorney General pursuant to a mutually agreeable Confidentiality Agreement.

WHEREFORE, Water Service respectfully requests that:

1. The Commission grant confidential protection the source files related to customer inquiries to the utility, 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.
2. The Commission grant a deviation from 807 KAR 5:001, Section 7, to permit confidential treatment of the entire document and accept the filing with two compact discs and no paper copies.

Respectfully submitted,



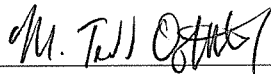
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ATTORNEY FOR WATER SERVICE CORPORATION

CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing will be served via First Class Mail, postage prepaid, this the 22nd day of May, 2012, to the following:

David Spenard, Assistant Attorney General
Office of the Attorney General
1024 Capitol Center Drive, Suite 200
Frankfort, Kentucky 40601



ATTORNEY FOR WATER SERVICE CORPORATION

11-ORD-196

November 21, 2011

In re: Clay P. Moore/City of Danville

Summary: City of Danville cannot produce nonexistent records for inspection or copying nor is the City required to “prove a negative” in order to refute a claim that certain records exist; however, the City violated the Open Records Act in failing to either provide requester with timely access to all existing responsive documents per KRS 61.880(1) or provide a detailed explanation of the cause for delay per KRS 61.872(5). City also erred in withholding record(s) containing the revenue collectively generated from sewer fees of “residential customers of Gwinn Island” on the basis of KRS 61.878(1)(a) as the requester sought aggregate information, which does not identify the water and sewer usage of specific individuals and thus cannot be properly characterized as “personal.”

Open Records Decision

The question presented in this appeal is whether the City of Danville violated the Kentucky Open Records Act in partially denying Clay P. Moore’s October 12, 2011, request for “one (1) copy of the revenue received by the City of Danville, by month for 2009, 2010, and 2011, to date, from commercial and residential sewer fees generated from the Mocks Creek Sewer Project” for “Northpoint [Training Center], Hunt Farm Subdivision (Jody Sharpe), and residential customers of Gwinn Island.” Having received no response, Mr. Moore initiated this appeal by letter dated October 20, 2011. Upon receiving

notification of Mr. Moore's appeal from this office, Danville City Clerk Donna Peek advised Mr. Moore, by letter dated October 31, 2011, that she was providing him with "a copy of all information available in the current computer system on Northpoint," and that "no records are available for Hunt farm (which is an undeveloped subdivision)[.]"¹ Citing 96-ORD-176 and KRS 61.878(1)(a), the City denied the remainder of Mr. Moore's request. Because any issues related to documents containing information related to Northpoint are moot per 40 KAR 1:030, Section 6,² and the City cannot produce nonexistent records for inspection or copying nor must a public agency such as the City "prove a negative" in order to refute a claim that certain records exist under governing case law,³ our analysis focuses exclusively on whether the City erred in withholding the collective amount of revenue generated from sewer fees of residential customers of Gwinn Island on the basis of KRS 61.878(1)(a).

Before addressing the remaining substantive question presented, this office is compelled to note that the City committed a procedural violation of the Open Records Act in failing to either provide Mr. Moore with timely access to all existing responsive documents per KRS 61.880(1) or provide a detailed explanation of the cause for delaying access per KRS 61.872(5). As a public agency, the City is obligated to comply with the procedural and substantive provisions of the Open Records Act. More specifically, KRS 61.880(1) contains the guidelines for responding to requests made thereunder. In relevant part, KRS 61.880(1) provides:

¹ "As a preliminary matter," Ms. Peek advised Mr. Moore that the City "would deny your request because you did not request specific documents and instead requested a compilation of information." This office has long recognized that a public agency is not statutorily required to create a record or compile a list in order to comply with a request under the Act; however, in lieu of doing so a public agency must provide the requester with an opportunity to inspect existing non-exempt records which may contain the information being sought. See 09-ORD-145, pp. 8-9.

² 40 KAR 1:030, Section 6 provides: "Moot complaints. If requested documents are made available to the complaining party after a complaint is made, the Attorney General shall decline to issue a decision in the matter." This office assumes, based upon the limited evidence presented, that the City provided Mr. Moore with any existing responsive documents.

³ *Bowling v. Lexington-Fayette Urban County Government*, 172 S.W.3d 333, 340-341 (Ky. 2005). On this issue, 11-ORD-137 is controlling; a copy of that decision is attached hereto and incorporated by reference.

Each public agency, upon any request for records made under KRS 61.870 to 61.884, shall determine within three (3) days, excepting Saturdays, Sundays, and legal holidays, after the receipt of any such request whether to comply with the request and shall notify in writing the person making the request, within the three (3) day period of its decision. An agency response denying, in whole or in part, inspection of any record shall include a statement of the specific exception authorizing the withholding of the record and a brief explanation of how the exception applies to the record withheld.

In applying this provision, the Attorney General has consistently observed:

“The value of information is partly a function of time.” *Fiduccia v. U.S. Department of Justice*, 185 F.3d 1035, 1041 (9th Cir. 1999). This is a fundamental premise of the Open Records Act, underscored by the three day agency response time codified at KRS 61.880(1). Contrary to [the City’s] apparent belief, the Act contemplates records production on the third business day after receipt of the request, and not simply notification that the agency will comply. In support, we note that KRS 61.872(5), the only provision in the Act that authorizes postponement of access to public records beyond three business days, expressly states:

If the public record is in active use, in storage or not otherwise available, the official custodian shall immediately notify the applicant and shall designate a place, time, and date for inspection of the public records not to exceed three (3) days from receipt of the application, unless a detailed explanation of the cause is given for further delay and the place, time, and earliest date on which the public record will be available for inspection.

Additionally, we note that in OAG 92-117 . . . this office made abundantly clear that the Act “normally requires the agency to notify the requester *and designate an inspection date not to exceed three*

days from agency receipt of the request." OAG 92-117, p. 3. Only if the parameters of a request are broad, and the records implicated contain a mixture of exempt and nonexempt information, and are difficult to locate and retrieve, will a determination of what is a "reasonable time for inspection turn on the particular facts presented." OAG 92-117, p. 4. In all other instances, "timely access" to public records is defined as "*any time less than three days from agency receipt of the request.*" OAG 82-300, p. 3; see also 93-ORD-134 and authorities cited therein.

01-ORD-140, pp. 3-4 (emphasis added). As in 01-ORD-140, this office must conclude that in failing to issue a written response to Mr. Moore's October 12, 2011, request within three business days of receipt *and* provide him with access to any *existing* responsive documents, the City violated KRS 61.880(1) as it did not invoke KRS 61.872(5). In the absence of a legitimate detailed explanation of the cause for the delay in providing access, the Attorney General must conclude that Mr. Moore did not receive "timely access" to the records eventually provided on October 31, 2011.

Noticeably absent from the City's October 31 response is any reference to KRS 61.872(5); also lacking is any explanation of the cause for delay. On appeal the City does not address either deficiency and its response(s) violated the Act in this regard. "The procedural requirements of the Open Records Act," the Attorney General has long observed, "are not mere formalities, but are an essential part of the prompt and orderly processing of an open records request." See, e.g., 10-ORD-057 and authorities cited therein. Further, "[t]he duty to respond to an open records request, and to afford the requester timely access to the records identified in this request, is as much a public servant's legal duty as any other essential function." 01-ORD-21, p. 4. Any other interpretation of the Act would be "clearly inconsistent with the natural and harmonious reading of KRS 61.870 considering the overall purpose of the [Act]," *Frankfort Publishing Co., Inc. v. Kentucky State University Foundation, Inc.*, Ky., 834 S.W.2d 681, 682 (1992), and the recognition that "the value of information is partly a function of time." *Fiduccia v. U.S. Department of Justice*, above, at 1041. See 01-ORD-38 ("KRS 61.872(5) envisions designation of the place, time, and *earliest date certain*, not a projected or speculative date, when the records will be available for

inspection.”); 10-ORD-201. Based upon the following, this office must conclude that the City’s response was also substantively incorrect.

In 09-ORD-196 (In re: Clay P. Moore/City of Danville Water and Sewer District), this office was asked to decide whether the agency violated the Open Records Act in denying Mr. Moore’s request for “one (1) copy of the 2008 and 2009, by month, water bills, to include sewer and storm water fees, paid to the City of Danville by EMRMC [Ephriam McDowell Regional Medical Center], Centre College, and CKASC [Central Kentucky Ambulatory Surgery Center, LLC].” *Id.*, p. 1. The agency relied on KRS 61.878(1)(a) in denying access “because those documents can be used to infer the personal lifestyle of a customer or suggest the competitive position of a commercial or industrial customer and would be an improper and unjustifiable invasion of the customers’ privacy,” as the Attorney General determined in 96-ORD-176.” 09-ORD-196, pp. 1-2. Significantly, this office modified 96-ORD-176 and 96-ORD-237, a related decision issued shortly after 96-ORD-176, as “[b]oth decisions were erroneously postulated on the notion that equal privacy interests could be attributed to aggregate information contained in a water bill for a customer with multiple unidentified users and information contained in a water bill for a single residential user.”

Although the agency relied in good faith on 96-ORD-176, this office noted, the Attorney General concluded “that disclosing the requested aggregate information would not identify the water and sewer usage of specific individuals; accordingly, that information cannot properly be characterized as ‘personal.’” 09-ORD-196, p. 2. In so doing, the Attorney General reasoned that “[t]he interest of the public in ensuring that the Department has, and fairly enforces a uniform billing structure for all customers outweighs the nonexistent privacy interest implicated by the disclosure of the requested billing records.” *Id.* Although Mr. Moore has requested generic, aggregate billing information of residential customers in this case, rather than for “multiple user entities,” the critical fact is that he did not ask for information that would identify the residential customers or implicate their privacy interests.

Inasmuch as 09-ORD-196 fundamentally stands for the proposition that generic, aggregate information contained in such billing records, which does not “identify the water and sewer usage of specific individuals cannot be properly

characterized as 'personal,'" the reasoning contained therein is equally applicable on the facts presented. A copy of that decision is attached hereto and incorporated by reference. In 96-ORD-176, a copy of which is also enclosed, this office found that "customer billing records contain information which 'touches upon the personal features of private lives'." *Id.* (citation omitted). To the extent such information "'can be used to infer a particular lifestyle of a residential customer or suggest the competitive position of commercial and industrial customers,'" the Attorney General agreed that "it is not unreasonable to assume that [a public utility's] customers have at least some expectation of privacy in their billing records." 96-ORD-176, p. 2. Accordingly, this office concluded "that billing records contain information of a personal nature" and the "relevant public interest supporting disclosure" in that appeal "did not outweigh the privacy interests of individual customers in their billing records." *Id.*, pp. 2-3. In so concluding, however, this office noted that the agency had indicated a willingness to provide "generic billing information without individual customer names" which could be used "to verify billing methodology and calculations." *Id.*

Our understanding is that Mr. Moore has requested nothing more and, if anything, has arguably requested less assuming that he is only seeking the revenue collectively generated from the fees of a specific group of residential customers. Release of "specific billing information, which identifies individual users and their individual water and sewer usage," remains, in our view, "simply too invasive." *Id.*, p. 3. As in 09-ORD-196, this office continues to ascribe to this view as it relates to specific billing information that would identify residential customers and reveal their personal habits, thereby implicating their privacy interests, "but modifies its position as it relates to aggregate information contained in billing records . . ." *Id.*, p. 6.

A party aggrieved by this decision may appeal it by initiating action in the appropriate circuit court pursuant to KRS 61.880(5) and KRS 61.882. Pursuant to KRS 61.880(3), the Attorney General should be notified of any action in circuit court, but should not be named as a party in that action or in any subsequent proceeding.

Jack Conway
Attorney General

Michelle D. Harrison
Assistant Attorney General

#386

Distributed to:

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Donna Peek
Bernie Hunstad
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