

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF KENTUCKY-AMERICAN)	
WATER COMPANY FOR A CERTIFICATE OF)	
PUBLIC CONVENIENCE AND NECESSITY)	CASE NO. 2007-00134
AUTHORIZING THE CONSTRUCTION OF)	
KENTUCKY RIVER STATION II, ASSOCIATED)	
FACILITIES AND TRANSMISSION MAIN)	

O R D E R

On October 24, 2007, the Commission entered an Order in this matter in which we addressed Kentucky-American Water Company's ("Kentucky-American") Motion to Compel Adequate Discovery Responses. Kentucky-American subsequently brought to our attention¹ our failure to address that portion of the motion that addresses Louisville Water Company's ("LWC") objections to certain discovery requests on the grounds that the requested information sought was "confidential," "proprietary" or "protected by the Homeland Security Act." By this Order, we address those objections.

In Item 3 of its discovery request, Kentucky-American requested that LWC provide a copy of its "operating policies and procedures for water treatment, storage, distribution, and transmission" and a copy of any operations manual. Describing this request as unduly burdensome and involving information that the Homeland Security Act ("HSA") protects, LWC objected to the request. LWC offered no reason to explain why the request was unduly burdensome or why the HSA prevented its disclosure.

¹ E-Mail from A.W. Turner, Jr., General Counsel, Kentucky-American Water Company, to David Samford, General Counsel, Kentucky Public Service Commission (Oct. 21, 2007, 07:55 EDT).

Accordingly, we find no basis to sustain LWC's objection and direct LWC to produce the requested information.

In Item 21 of its discovery request, Kentucky-American requested a list of the top 50 industrial customers by overall annual demand, these customers' historical average daily demands for 2001 through 2006 and their projected average daily demands in 2020, 2025, and 2030. LWC responded that it did not maintain most of the requested information, but provided a redacted list of the overall annual demand of each of its top 50 industrial customers. The names of these customers were not provided.

Kentucky-American suggests that LWC failed to comply with 807 KAR 5:001, Section 7, by not petitioning for confidential protection of the names of its customers. LWC has failed to respond to this assertion in its response to Kentucky-American's motion. While we agree that LWC failed to properly request confidential treatment of the names of the industrial customers in question, we find that the information is considered confidential under the Kentucky Open Records Act.² Moreover, we fail to see the compelling need for the names of the industrial customers. We therefore sustain the objection.

In Item 22 of its discovery request, Kentucky-American requests the maximum monthly demands of each of LWC's top 50 industrial customers for the last 5 years and the month and year that the maximum monthly demand occurred. LWC provided this information, but withheld the identity of these customers on the grounds of confidentiality and did not follow the procedures set forth in 807 KAR 5:001, Section 7,

² OAG 96-ORD-176 (Aug 20, 1996).

for obtaining confidential treatment of these identities. For the same reasons that we sustained LWC's objection to Item 21, we sustain the objection to this request.

In Item 44 of its discovery request, Kentucky-American requests a detailed description of LWC's backup power suppliers at its treatment plants and pump stations, its relationship to the amount of system storage, and all plans for changes to LWC's backup power supplies. LWC objected to the request as unduly burdensome and as involving confidential information that the HSA protects. LWC, however, did not petition for confidential treatment of the information and why the request was unduly burdensome or why the HSA prevented its disclosure. Accordingly, we find no basis to sustain LWC's objection and direct LWC to produce the requested information.

In Item 115 of its discovery request, Kentucky-American requests LWC's disaster and emergency operation plans. Describing the request as unduly burdensome, involving confidential information that the HSA protects, and not reasonably calculated to lead to the discovery of admissible evidence, LWC objects. Kentucky-American contends that the objection should be overruled because LWC has failed to petition for confidential treatment of the information and has failed to provide adequate explanation for its objection. Based upon our review of the response and Kentucky-American's motion, we sustain the objection based upon Kentucky-American's failure to explain the relevance and need for the requested information. We do not address LWC's assertion of confidentiality and the applicability of the HSA.

In Item 116 of its discovery request, Kentucky-American requests all LWC security systems plans or manuals identifying LWC's approach to securing its raw water

sources, treatment and distribution facilities. Describing the request as unduly burdensome, involving confidential information that the HSA protects, and not reasonably calculated to lead to the discovery of admissible evidence, LWC objects. For the same reasons set forth with respect to Item 115, we sustain the objection.

IT IS THEREFORE ORDERED that:

1. Kentucky-American's Motion to Compel Adequate Discovery Responses as it relates to Request 3 is granted. No later than November 5, 2007, LWC shall provide to Kentucky-American a copy of LWC's "operating policies and procedures for water treatment, storage, distribution, and transmission" and a copy of any operations manuals.

2. All other provisions of the Commission's Order of October 24, 2007 are affirmed and remain in effect.

Done at Frankfort, Kentucky, this 29th day of October, 2007.

By the Commission

Commissioner Clark Abstains

ATTEST:



Executive Director