

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

IN THE MATTER OF:)
)
NOTICE OF ADJUSTMENT OF THE RATES OF) **CASE NO. 2004-00103**
KENTUCKY-AMERICAN WATER COMPANY)
EFFECTIVE ON AND AFTER MAY 30, 2004)

PETITION FOR CONFIDENTIALITY

Comes Kentucky-American Water Company (“Kentucky American Water”), a public utility regulated by the Public Service Commission of the Commonwealth of Kentucky, and in conformity with 807 KAR 5:001, Section 7 and the Commission’s April 22, 2004 Order, attaches hereto the following:

- (1) One copy under seal of the Testimony of Bruce M. Larson, Director, Security Programs for American Water, Kentucky American Water’s parent corporation dated April 30, 2004, indicating the material therein considered confidential by highlighting and one copy under seal of the Testimony of Kenneth I. Rubin, a Member of the PA Consulting Group dated April 30, 2004, indicating the material therein considered confidential by highlighting;
- (2) A CD-ROM under seal of the above-referenced Testimonies indicating the material therein considered confidential by highlighting; and
- (3) One copy of the above-referenced Testimonies with those portions for which confidentiality is sought obscured.

It is imperative that the highlighted portions of the Testimonies of Messrs. Larson and Rubin be kept confidential so that Kentucky American Water can protect its assets and facilities from damage, destruction and/or malevolent acts. The protection of Kentucky American Water’s assets and facilities is critical to the safe delivery of water to all customers in its service territory. These assets and facilities have been at heightened risks as a result of the terrorist attacks in

New York and Washington, D.C. on September 11, 2001 and continue to be so. The highlighted information in the attached Testimonies is exempt from disclosure under KRS § 61.878(1)(k) which exempts from disclosure “[a]ll public records or information the disclosure of which is prohibited by federal law or regulation; . . .”

On June 12, 2002, Congress passed Public Law 107-188, the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. Section 401 of that Act amended Section 1433 of the Safe Drinking Water Act to require vulnerability assessments of community water systems serving more than 3,300 people. That portion of the Act has been codified at 42 U.S.C. § 300i-2, a copy of which is attached hereto. The Act provides for extensive and significant safeguards for treating the information contained in the vulnerability assessments as confidential:

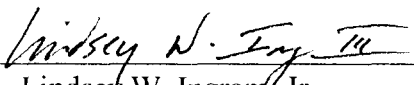
- The information is exempt from disclosure under 5 U.S.C. § 552.
- The requirement of the submission of the vulnerability assessment is not sufficient under local law to require that it be submitted to any local governmental entity.
- Protocols will be developed to protect copies of the vulnerability assessments from unauthorized disclosure to include the requirements that:
 - They be kept in a secure location,
 - Only designated individuals may have access to them, and
 - No part of any assessment shall be available to anyone other than designated individuals.

Thus, federal law, specifically Public Law 107-188, prohibits the disclosure of the vulnerability assessments and the related information which are the highlighted portions of the attached Testimonies. Further, the disclosure of the highlighted information could subject Kentucky American Water’s assets and facilities to malevolent acts. Finally, the Commission has previously afforded confidential treatment to this same type of information in In Re:

Kentucky-American Water Company's July 31, 2002 Power Outage Incident Report and
Kentucky-American Water Company's Storage Capacity Analysis Dated November 15, 2002.
(See attached December 23, 2003 letter from Executive Director Dorman).

WHEREFORE, Kentucky-American Water Company prays that the highlighted portions
of the attached Testimonies of Messrs. Larson and Rubin be afforded confidential treatment by
the Commission.

STOLL, KEENON & PARK, LLP
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507-1801
Telephone: (859) 231-3000

BY: 
Lindsey W. Ingram, Jr.
Lindsey W. Ingram III

ATTORNEYS FOR
KENTUCKY AMERICAN WATER

CERTIFICATE

This is to certify that a true and accurate electronic copy of the foregoing has been transmitted to the Public Service Commission and that the undersigned has notified, by electronic mail, the following parties of its electronic transmission of the foregoing on this 30th day of April, 2004:

Kentucky Public Service Commission
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ATTORNEYS FOR
KENTUCKY AMERICAN WATER

42 U.S.C.A. § 300i-2

▷

United States Code Annotated Currentness

Title 42. The Public Health and Welfare

Chapter 6A. Public Health Service (Refs & Annos)

Subchapter XII. Safety of Public Water Systems

Part D. Emergency Powers

→ § 300i-2. Terrorist and other intentional acts

(a) Vulnerability assessments

(1) Each community water system serving a population of greater than 3,300 persons shall conduct an assessment of the vulnerability of its system to a terrorist attack or other intentional acts intended to substantially disrupt the ability of the system to provide a safe and reliable supply of drinking water. The vulnerability assessment shall include, but not be limited to, a review of pipes and constructed conveyances, physical barriers, water collection, pretreatment, treatment, storage and distribution facilities, electronic, computer or other automated systems which are utilized by the public water system, the use, storage, or handling of various chemicals, and the operation and maintenance of such system. The Administrator, not later than August 1, 2002, after consultation with appropriate departments and agencies of the Federal Government and with State and local governments, shall provide baseline information to community water systems required to conduct vulnerability assessments regarding which kinds of terrorist attacks or other intentional acts are the probable threats to--

(A) substantially disrupt the ability of the system to provide a safe and reliable supply of drinking water; or

(B) otherwise present significant public health concerns.

(2) Each community water system referred to in paragraph (1) shall certify to the Administrator that the system has conducted an assessment complying with paragraph (1) and shall submit to the Administrator a written copy of the assessment. Such certification and submission shall be made prior to:

(A) March 31, 2003, in the case of systems serving a population of 100,000 or more.

(B) December 31, 2003, in the case of systems serving a population of 50,000 or more but less than 100,000.

(C) June 30, 2004, in the case of systems serving a population greater than 3,300 but less than 50,000.

(3) Except for information contained in a certification under this subsection identifying the system submitting the certification and the date of the certification, all information provided to the Administrator under this subsection and all information derived therefrom shall be exempt from disclosure under section 552 of Title 5.

(4) No community water system shall be required under State or local law to provide an assessment described in this

42 U.S.C.A. § 300i-2

section to any State, regional, or local governmental entity solely by reason of the requirement set forth in paragraph (2) that the system submit such assessment to the Administrator.

(5) Not later than November 30, 2002, the Administrator, in consultation with appropriate Federal law enforcement and intelligence officials, shall develop such protocols as may be necessary to protect the copies of the assessments required to be submitted under this subsection (and the information contained therein) from unauthorized disclosure. Such protocols shall ensure that--

(A) each copy of such assessment, and all information contained in or derived from the assessment, is kept in a secure location;

(B) only individuals designated by the Administrator may have access to the copies of the assessments; and

(C) no copy of an assessment, or part of an assessment, or information contained in or derived from an assessment shall be available to anyone other than an individual designated by the Administrator.

At the earliest possible time prior to November 30, 2002, the Administrator shall complete the development of such protocols for the purpose of having them in place prior to receiving any vulnerability assessments from community water systems under this subsection.

(6)(A) Except as provided in subparagraph (B), any individual referred to in paragraph (5)(B) who acquires the assessment submitted under paragraph (2), or any reproduction of such assessment, or any information derived from such assessment, and who knowingly or recklessly reveals such assessment, reproduction, or information other than--

(i) to an individual designated by the Administrator under paragraph (5),

(ii) for purposes of section 300j-4 of this title or for actions under section 300j of this title, or

(iii) for use in any administrative or judicial proceeding to impose a penalty for failure to comply with this section,

shall upon conviction be imprisoned for not more than one year or fined in accordance with the provisions of chapter 227 of Title 18, applicable to class A misdemeanors, or both, and shall be removed from Federal office or employment.

(B) Notwithstanding subparagraph (A), an individual referred to in paragraph (5)(B) who is an officer or employee of the United States may discuss the contents of a vulnerability assessment submitted under this section with a State or local official.

(7) Nothing in this section authorizes any person to withhold any information from Congress or from any committee or subcommittee of Congress.

42 U.S.C.A. § 300i-2

(b) Emergency response plan

Each community water system serving a population greater than 3,300 shall prepare or revise, where necessary, an emergency response plan that incorporates the results of vulnerability assessments that have been completed. Each such community water system shall certify to the Administrator, as soon as reasonably possible after the enactment of this section, but not later than 6 months after the completion of the vulnerability assessment under subsection (a) of this section, that the system has completed such plan. The emergency response plan shall include, but not be limited to, plans, procedures, and identification of equipment that can be implemented or utilized in the event of a terrorist or other intentional attack on the public water system. The emergency response plan shall also include actions, procedures, and identification of equipment which can obviate or significantly lessen the impact of terrorist attacks or other intentional actions on the public health and the safety and supply of drinking water provided to communities and individuals. Community water systems shall, to the extent possible, coordinate with existing Local Emergency Planning Committees established under the Emergency Planning and Community Right-to-Know Act (42 U.S.C. 11001 et seq.) when preparing or revising an emergency response plan under this subsection.

(c) Record maintenance

Each community water system shall maintain a copy of the emergency response plan completed pursuant to subsection (b) of this section for 5 years after such plan has been certified to the Administrator under this section.

(d) Guidance to small public water systems

The Administrator shall provide guidance to community water systems serving a population of less than 3,300 persons on how to conduct vulnerability assessments, prepare emergency response plans, and address threats from terrorist attacks or other intentional actions designed to disrupt the provision of safe drinking water or significantly affect the public health or significantly affect the safety or supply of drinking water provided to communities and individuals.

(e) Funding

(1) There are authorized to be appropriated to carry out this section not more than \$160,000,000 for the fiscal year 2002 and such sums as may be necessary for the fiscal years 2003 through 2005.

(2) The Administrator, in coordination with State and local governments, may use funds made available under paragraph (1) to provide financial assistance to community water systems for purposes of compliance with the requirements of subsections (a) and (b) of this section and to community water systems for expenses and contracts designed to address basic security enhancements of critical importance and significant threats to public health and the supply of drinking water as determined by a vulnerability assessment conducted under subsection (a) of this

42 U.S.C.A. § 300i-2

section. Such basic security enhancements may include, but shall not be limited to the following:

- (A) the purchase and installation of equipment for detection of intruders;
- (B) the purchase and installation of fencing, gating, lighting, or security cameras;
- (C) the tamper-proofing of manhole covers, fire hydrants, and valve boxes;
- (D) the rekeying of doors and locks;
- (E) improvements to electronic, computer, or other automated systems and remote security systems;
- (F) participation in training programs, and the purchase of training manuals and guidance materials, relating to security against terrorist attacks;
- (G) improvements in the use, storage, or handling of various chemicals; and
- (H) security screening of employees or contractor support services.

Funding under this subsection for basic security enhancements shall not include expenditures for personnel costs, or monitoring, operation, or maintenance of facilities, equipment, or systems.

(3) The Administrator may use not more than \$5,000,000 from the funds made available under paragraph (1) to make grants to community water systems to assist in responding to and alleviating any vulnerability to a terrorist attack or other intentional acts intended to substantially disrupt the ability of the system to provide a safe and reliable supply of drinking water (including sources of water for such systems) which the Administrator determines to present an immediate and urgent security need.

(4) The Administrator may use not more than \$5,000,000 from the funds made available under paragraph (1) to make grants to community water systems serving a population of less than 3,300 persons for activities and projects undertaken in accordance with the guidance provided to such systems under subsection (d) of this section.

CREDIT(S)

(July 1, 1944, c. 373, Title XIV, § 1433, as added June 12, 2002, Pub.L. 107-188, Title IV, § 401, 116 Stat. 682.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

2002 Acts. House Conference Report No. 107-481 and Statement by President, see 2002 U.S. Code Cong. and Adm. News, p. 464.


42 U.S.C.A. § 300i-2

References in Text

Chapter 227 of Title 18, referred to in subsec. (a)(6)(A)(ii), is 18 U.S.C.A. § 3551 et seq.

The Emergency Planning and Community Right-to-Know Act, referred to in subsec. (b), probably means the Emergency Planning and Community Right-to-Know Act of 1986, Title III of Pub.L. 99-499, Oct. 17, 1986, 100 Stat. 1728, which is classified principally to chapter 116 of this title, 42 U.S.C.A. § 11001 et seq. For complete classification of this Act to the Code, see Short Title of 1986 Amendments note set out under 42 U.S.C.A. § 11001 and Tables.

American Digest System

Waters and Water Courses  212.

Key Number System Topic No. 405.

Corpus Juris Secundum

Forms

Texts and Treatises

42 U.S.C.A. § 300i-2, 42 USCA § 300i-2

Current through P.L. 108-219 approved April 13, 2004.

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END OF DOCUMENT



Ernie Fletcher
Governor

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Thomas M. Dorman
Executive Director
Public Service Commission

Robert E. Spurlin
Commissioner

December 23, 2003

Lindsey W. Ingram, Jr., Esq.
Stoll, Keenon & Park, LLP
300 West Vine Street, Suite 2100
Lexington, KY 40507-1801

Re: Request for Confidential Treatment

Dear Mr. Ingram:

Kentucky American Water Company ("KAWC") has requested confidential treatment of certain information contained in two reports. The first report is titled "Kentucky-American Water Company July 31, 2002 Power Outage Incident" dated November 15, 2002 ("Outage Report"). The second report is titled "Kentucky-American Water Company Storage Capacity Analysis" and is also dated November 15, 2002 ("Storage Capacity Report"). These reports were submitted at the request of staff.

KAWC gives four arguments to support its request. First, it cites the need to protect its critical assets from damage. Second, it argues that release of the information would place "an unreasonable burden upon KAWC. Third, KAWC argues that the information for which confidentiality is requested is proprietary. Fourth, KAWC cites KRS 61.878(1)(k), which exempts "All public records or information the disclosure of which is prohibited by federal law or regulation." Commission Staff agrees that the records for which confidential treatment is sought are exempt from disclosure pursuant to KRS 61.878(1)(k).

On June 12, 2002, the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (PL 107-188)¹ amended the Safe Drinking Water Act ("SDWA") adding Section 1433. PL 107-188 Section 4(A) requires community water systems to conduct Vulnerability Assessments ("VA") of their systems and submit them to the Federal Environmental Protection Agency. The VAs include a review of: pipes and

¹ "Instructions to Assist Community Water Systems in Complying with the Public Health Security and Bioterrorism Preparedness and Response Act of 2002"



constructed conveyances, water collection, treatment, storage, and distribution facilities, automated systems, storage and handling of chemicals, and the operation and maintenance of the system. The VAs also includes an evaluation of the critical assets in the system that might be subject to malevolent acts that could result in undesired consequences. Information contained in the VAs I is exempt from disclosure.

PL 107-188 Section 401(A) also required that the EPA implement a protocol to protect the VAs from unauthorized disclosure. A summary of the EPA protocol follows:

- An EPA Information Security Manager with "Top Secret" clearance will oversee the protection of the information in the VAs.
- Only individuals designated by the EPA administrator will have access to the VAs and information derived from them.
- All designees require "Secret" clearance.
- All submitted VAs will be housed at EPA headquarters in a secure location.
- Copying, faxing, and loaning of VAs will be prohibited.²

The information for which KAWC seeks confidential treatment: location and operational detail of treatment, storage, pumping, and other distribution facilities, is the kind of information required by the EPA for the Vulnerability Assessment. The disclosure of the information could subject KAWCs critical assets to malevolent acts. Accordingly, pursuant to federal law, the information is exempt from Kentucky Open Records requirements under KRS 61.878(1)(k).

Sincerely,



Thomas M. Dorman
Executive Director

² "US EPA – "Responsibilities under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002".

