

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Adjustment of Rates of Kentucky-
American Water Company

)
)

Case No. 2004-00103

ATTORNEY GENERAL'S MOTION TO COMPEL
KENTUCKY-AMERICAN WATER COMPANY
TO PROVIDE COMPLETE ANSWERS TO THREE
QUESTIONS IN HIS REQUEST FOR INFORMATION

The Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, his Motion for the Public Service Commission to enter an Order to Compel Kentucky-American Water Company to provide complete answers to three of his data requests from his request for information submitted on 10 June 2004. The Attorney General requests that the Order Compel the provision of the answers no later than 6 August 2004.

The Attorney General notes that his Motion does not represent an abandonment or waiver regarding any of his other questions in the request for information. Furthermore, he notes that the issue of whether the Commission should provide him with leave to ask supplemental information requests for the material sought is not yet ripe.

In support of his Motion to Compel, he states the following:

AG 1 - 144 asks the following:

For each of the past five years, a) please provide a list of the companies that have filed a consolidated tax return with KAWC, b) please provide, by year, the taxable income or tax losses incurred by each company, and c) identify which companies are regulated utilities.

KAWC provides the following response.

Kentucky-American Water Company objects to this data request because the information sought is irrelevant and immaterial.

In PSC Case No. 2002-00317,¹ Kentucky-American, as a Joint Applicant for the approval of a change in control, asserted “that the ability to file a consolidated tax return provides two financial benefits.”² First, it reduces “administrative expense by eliminating the need to file multiple tax returns in the United States.”³ “Second, it may permit some tax savings by allowing the payment of taxes calculated on the net profits of all entities within the consolidated group.”⁴

Inquiry into this matter is well within the bounds of legitimate discovery. Foremost, it is appropriate to allow inquiry into whether the filing of the consolidated returns has resulted in any savings, financial benefit, or detriment to Kentucky-American. The Commission has accepted the use of an effective tax

¹ *In the Matter of: The Joint Petition of Kentucky-American Water Company, Thames Water Aqua Holdings GmbH, RWE Aktiengesellschaft, Thames Water Aqua US Holdings, Inc., Apollo Acquisition Company and American Water Works Company, Inc., for Approval of a Change of Control of Kentucky-American Water Company.*

² Case No. 2002-00317, Order, 20 December 2002, page 8.

³ Case No. 2002-00317, Order, 20 December 2002, page 8.

⁴ Case No. 2002-00317, Order, 20 December 2002, page 8.

rate with regard to Union Light, Heat and Power,⁵ and inquiry into the impact of the use of a consolidated income tax return is wholly proper. Second, it is clear from the record that KAWC is a Company within a complex web of affiliates, and it is appropriate to investigate the facts and circumstances relating to its relationship with its affiliates both regulated and non-regulated and whether it has an impact on the rates of the Kentucky-American Water Company.

AG 1 - 158 asks the following:

Please identify the entities that have been given presentations by Kentucky-American regarding the outsourcing of management, contract operations, partnerships, transfer of assets, merger, or any other form of consolidation or change in control. Supply a listing of entities and presentations from January 1, 2002, to present. Include copies of all correspondence and meeting materials. (The response does not need to include any materials for the February 2002 proposal to Owenton that were previously supplied in PSC Case No. 2002-00018 in response to AG 1-24 in that case.) Include in the response the name(s) of the presenter(s) or participants for each presentation.

Kentucky-American provides the following response.

Kentucky-American Water Company objects to this data request because the information sought is irrelevant, immaterial and inadmissible as there are no investments, revenues or expenses in this rate request relative to the assimilation of such entities into the operations of Kentucky-American Water Company.

⁵ *In the Matter of: Adjustment of Gas Rates of the Union Light, Heat and Power Company*, Case No. 2001-00092, Order, 31 January 2002, pages 58 to 60.

RWE and KAWC expect new growth in the unregulated O & M business and in the wastewater business.⁶ Wastewater and municipal “partnerships” are vitally important to RWE and Kentucky-American’s vision and strategy.⁷

As Kentucky-American is seeking growth in regulated water, regulated wastewater, and non-regulated services, great care should be taken to make sure that Kentucky-American customers paying for regulated water service do not have to fund wastewater and non-regulated services - including business development activities. The information sought is relevant to how Kentucky-American utilizes its resources and bears directly upon the question of the reasonableness of its allocations to its water, wastewater, and non-regulated service activities. KAWC’s customers are entitled to a fair allocation of costs to the Company’s wastewater and non-regulated activities.

AG 1 - 176 asks the following:

Reference: Application, Exhibit 25. Please provide a copy of Kentucky-American’s current strategic business plan.

Kentucky-American provides the following response.

Response: The 2004 and 2005 information in the Plan has been incorporated into this case and all other information in the Plan is irrelevant, immaterial and inadmissible in this request for a general increase in rates using a forecasted test year of the 12 months ending November 30, 2005.

⁶ Case No. 2002-00018, AG 1 - 117.

⁷ KAWC Response to LFUCG 1 - 19, page 1 of 74; also page 16 of 74 and page 38 of 74.

The Commission has used information from the Company's business plan in determining reasonable rates for KAWC.⁸ There is no issue as to the relevance of the business plan information. The record in this case reflects an abundance of financial information for the period beyond the twelve months ending 30 November 2005.⁹ Thus, it is clear that information pertaining to the period beyond November 2005 (as well as the period prior to the commencement of the base period) is relevant to test the reasonableness of the Company's positions and proposals. The business plan may also contain information relevant to the reasonableness of the Company's allocations to its wastewater and non-regulated services. In sum, the business plan information is relevant.¹⁰

WHEREFORE, the Attorney General moves for an Order that Compels Kentucky-American Water Company to provide complete answers to these three data request questions no later than 6 August 2004.

Respectfully submitted,

GREGORY D. STUMBO
ATTORNEY GENERAL
/s/ David Edward Spenard
David Edward Spenard
Dennis G. Howard II
Assistant Attorneys General

⁸ For example, *In the Matter of: Application of Kentucky-American Water Company to Increase Its Rates*, Case No. 2000-00120, Order, 27 November 2000, page 34.

⁹ See, for example, KAWC response to PSC 1 - 9 (long-term construction planning program, 2006 to 2010); PSC 2 - 123 (common equity ratio for 2006); PSC 2 - 104 (health care cost trend rate 2004 to 2008, and 2009+); PSC 2 - 120 (source of supply development 2006 and 2007 and source of supply project 2007 through 2010).

¹⁰ Without reviewing the information, the Attorney General cannot respond to the claims that it is immaterial or inadmissible. He does not concede that either of the claims has a legitimate basis.

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Submission of Filing in Paper Medium

Per Instructions 3 and 13 of the Commission's 27 May 2004 Order, Counsel submits for filing, by hand delivery to Beth O'Donnell, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601, the original and one copy in paper medium of the document. 19 July 2004 is the date for the filing in paper medium.

/s/ David Edward Spenard
Assistant Attorney General

Certificate of Service

Per Instructions 4, 8 (d), and 12 of the May 27th Order, Counsel certifies service of a true and correct photocopy of the document by mailing the photocopies, first class postage prepaid, to the other parties of record on 16 July 2004.

The following are the other parties of record: David Jeffrey Barberie, Leslye M. Bowman, Lexington-Fayette Urban County Government, Department of Law, 200 East Main Street, Lexington, Kentucky 40507; Coleman D. Bush, Kentucky-American Water Company, 2300 Richmond Road, Lexington, Kentucky 40502; Joe F. Childers, 201 West Short Street, Suite 310, Lexington, Kentucky 40507; Roy L. Ferrell, West Virginia American Water Company, 1600 Pennsylvania Avenue, Charleston, West Virginia 25302; Lindsey W. Ingram III,

Stoll, Keenon & Park, LLP, 300 West Vine Street, Suite 2100, Lexington, Kentucky 40507-1801; Lindsey W. Ingram, Jr., Stoll, Keenon & Park, LLP, 300 West Vine Street, Suite 2100, Lexington, Kentucky 40507-1801; Michael A. Miller, West Virginia American Water Company, 1600 Pennsylvania Avenue, Charleston, West Virginia, 25302; Jon Parker, 201 W. Short Street, Suite 310, Lexington, Kentucky 40507; and Roy W. Mundy II, Kentucky-American Water Company 2300 Richmond Road, Lexington, Kentucky 40502.

/s/ David Edward Spenard
Assistant Attorney General

Certification Regarding Electronic Filing

Counsel certifies that he has (per Instructions 3 and 8 (b) of the May 27th Order) submitted one copy of the document in electronic medium. Pursuant to Instructions 8 (a) and 8 (c) of the May 27th Order, he certifies that the electronic version of the filing is a true and accurate copy of the document filed in paper medium and that he has, by electronic mail, notified the Commission and the other parties that the electronic version of the filing has been transmitted to the Commission. (See attached) 16 July 2004 is the date of filing in electronic medium.

/s/ David Edward Spenard
Assistant Attorney General