

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

**In the Matter of:**

<b>THE JOINT PETITION OF KENTUCKY-</b>	)	
<b>AMERICAN WATER COMPANY, THAMES</b>	)	
<b>WATER AQUA HOLDINGS GMBH, RWE</b>	)	
<b>AKTIENGESELLSCHAFT, THAMES</b>	)	
<b>WATER AQUA US HOLDINGS, INC.,</b>	)	<b>CASE NO. 2006-00197</b>
<b>AND AMERICAN WATER WORKS</b>	)	
<b>COMPANY, INC. FOR APPROVAL OF A</b>	)	
<b>CHANGE IN CONTROL OF KENTUCKY-</b>	)	
<b>AMERICAN WATER COMPANY</b>	)	

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**PETITIONERS' MOTION FOR  
CONFIDENTIAL TREATMENT**

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Kentucky-American Water Company (“KAWC”), Thames Water Aqua Holdings GmbH (“Thames”), RWE Aktiengesellschaft (“RWE”), Thames Water Aqua US Holdings, Inc. (“TWUS”) and American Water Works Company, Inc. (“AWWC”) (collectively the “Petitioners”) move the Kentucky Public Service Commission (“Commission”) pursuant to 807 KAR 5:001, Section 7, and KRS 61.878(1)(c) to grant confidential treatment to certain information relating to RWE’s and AWWC’s financial and business affairs. In support of this motion, Petitioners state as follows:

1. On June 27, 2006, the Commission issued an order in this proceeding which, among other things, in Item No. 8, directed Petitioners to provide certain information relating to reports received by the Petitioners from their financial advisers relating to the proposed merger and public offering that are the subject of this proceeding.
2. On June 27, 2006, the Lexington-Fayette Urban County Government (“LFUCG”) served its Initial Requests for Information on Petitioners in this proceeding

which, among other things, in Item 33, requested AWWC to provide financial information relating to its unregulated lines of business.

3. The Kentucky Open Records Act exempts from disclosure certain commercial information. KRS 61.878(1)(c). To qualify for this exemption and, therefore, maintain the confidentiality of the information, a party must establish that disclosure of the commercial information would permit an unfair advantage to competitors of the party seeking confidentiality.

4. Portions of the documents responsive to Staff 1-8 and LFUCG 1-33 contain sensitive commercial or proprietary information, the disclosure of which would unfairly advantage RWE's and AWWC's competitors.

5. The financial adviser's reports that are responsive to Staff 1-8 were used in the development of the Proposed Transaction that is the subject of this proceeding. The documents contain financial and other confidential information not available to the public, including projections of earnings, about RWE and AWWC that could be used by competitors to gain a competitive advantage over those companies. It could also be used by entities in the securities business to gain a financial advantage over RWE in connection with the negotiation of relationships and agreements relating to the Proposed Transaction that would ultimately make the Proposed Transaction more costly to RWE than it should be. Furthermore, portions of the documents responsive to Staff 1-8 contain information that could result in a possible "gun-jumping" violation under U.S. federal securities laws were such information to be made publicly available. Under U.S. federal securities laws, it is unlawful to offer to sell securities prior to the filing of a registration statement relating to such securities with the Securities and Exchange Commission

(“SEC”). An “offer to sell” has been broadly construed by the courts and the SEC and it is possible that the courts and/or the SEC could determine that the publication of the information in question could constitute an offer to sell and because such materials discuss the proposed offering they would not fall within any of the safe-harbors for pre-filing communications under the Securities Act of 1933. In the event of a gun-jumping violation, the SEC may, among other things, delay the proposed offering. In addition, if a court determines that there has been a violation, a purchaser of securities who received an improper communication might be able to rescind the purchase of the security and receive the full purchase price of the security.

6. The financial information responsive to LFUCG 1-33 contains sensitive nonpublic information regarding the results of operations of AWWC’s competitive, unregulated lines of business. This information could be used to gain competitive advantage over AWWC in AWWC’s O&M and other competitive lines of business.

7. The responsive documents demonstrate on their faces that they merit confidential treatment. If the Commission disagrees, however, it must hold an evidentiary hearing to protect the due process rights of Petitioners and supply the Commission with a complete record to enable it to reach a decision with regard to this matter. Utility Regulatory Commission v. Kentucky Water Service Company, Inc., Ky. App., 642 S.W.2d 591, 592-94 (1982).

8. The information for which Petitioners are seeking confidential treatment is not known outside of Petitioners, and it is not disseminated within Petitioners except to those employees with a legitimate business need to know and act upon the information.

9. Petitioners do not object to disclosure of the confidential information, pursuant to an agreed protective agreement, to intervenors in this proceeding. In accordance with the provisions of the order of June 5, 2006, herein, one paper copy of the confidential information contained in the responsive documents is highlighted and placed under seal and on a CD-ROM and an original and a paper copy and one electronic copy of the responsive documents with the confidential information redacted are herewith filed with the Commission.

**WHEREFORE**, Petitioners respectfully request that the Commission grant confidential treatment for the information at issue, 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.

Respectfully submitted,

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American Water Works Company, Inc., and  
Kentucky-American Water Company

**CERTIFICATION**

This is to certify that a true and accurate copy of the foregoing has been electronically transmitted to the Public Service Commission on July 11, 2006; that the Public Service Commission and other parties participating by electronic means have been notified of such electronic transmission; that, on July 12, 2006, the original and one (1) copy in paper medium will be hand-delivered to the Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; and that on July 12, 2006, one (1) copy in paper medium will be served upon the following via U.S. Mail:

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