

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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.,)	CASE NO. 2006-00197
AND AMERICAN WATER WORKS)	
COMPANY, INC. FOR APPROVAL OF A)	
CHANGE IN CONTROL OF KENTUCKY-)	
AMERICAN WATER COMPANY)	

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**PETITIONERS' MOTION FOR
CONFIDENTIAL TREATMENT
OF BOARD MATERIALS**

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 Lexington-Fayette Urban County Government (“LFUCG”) served its Initial Requests for Information on Petitioners in this proceeding which, among other things, in Item 45, requested Petitioners to provide Board of Director minutes and information provided to Boards of Directors in which the change of control is discussed. Counsel for Petitioners received translated copies of materials provided to the RWE Board of Supervisors and excerpts of minutes of meetings of the RWE Board of

Supervisors, which contain, among other things, information not relating to the change of control and information subject to the attorney-client privilege. Such information has been completely redacted from the material produced in response to LFUCG 1-45. In addition, such material contains material that, while responsive and non-privileged, is confidential. That information is the subject of this motion.

2. 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. The Kentucky Open Records Act also exempts from disclosure information the disclosure of which is prohibited by federal and state law and regulations. KRS 61.878(1)(k) and (l).

3. Portions of the documents responsive to LFUCG 1-45 contain sensitive commercial or proprietary information, the disclosure of which would unfairly advantage RWE's competitors. In addition, the presentations and minutes contain financial and other confidential business information not available to the public, including projections of earnings, descriptions of negotiations, proposals relating to AWWC and the like, that are not publicly available. This information could be used by RWE's competitors to gain a competitive advantage over it. In addition, the information could have an adverse impact of the proposed public offering of AWWC's stock. Furthermore, portions of the documents responsive to LFUCG 1-45 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.

4. 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).

5. 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.

6. Petitioners do not object to disclosure of the responsive, non-privileged 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 17, 2006; that the Public Service Commission and other parties participating by electronic means have been notified of such electronic transmission; that, on July 17, 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 17, 2006, one (1) copy in paper medium will be served upon the following via U.S. Mail:

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