

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

**PETITIONERS' REPLY IN FURTHER
SUPPORT OF MOTION FOR
CONFIDENTIAL TREATMENT**

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”) hereby submit this Reply in further support of their Motion for Confidential Treatment previously filed herein. The Attorney General of the Commonwealth of Kentucky (“AG”) has filed a Response taking issue with two pieces of information redacted from attachments responsive to Item No. 8 of the Commission Staff’s First Data Request and from Item 33 of the Lexington-Fayette County Urban County Government’s (“LFUCG”) First Data Request. This Reply will demonstrate why the redacted information should not be produced.

The AG argues that information relating to rate cases in 20 states, including Kentucky, which appears at page 73 of the April 21, 2006, Goldman Sachs presentation attached to the response to Staff 1-8 should be produced. His argument is that information concerning rate case planning does not enjoy any tradition of being

confidential.¹ The information on page 73 was redacted for two reasons: (i) it is not responsive to Staff 1-8 (which calls for “reports related to the proposed merger and public offering”) and (ii) some of the information (in the “Notes” and “Approval Required?” columns) is subject to the attorney-client privilege and the work product doctrine.

As to the unresponsiveness of the rate case information, it is clear that rate case information has nothing whatever to do with the proposed merger or the public offering. For that reason it was redacted. Moreover, rate case information relating to the 19 states other than Kentucky could have no possible relevance to this proceeding. It is also confidential as utilities customarily do not discuss in the public forum their pre-case thinking about rate cases. This information has nothing whatever to do with the issue of whether the Proposed Transaction should be approved pursuant to KRS 278.020.

As to the attorney-client privilege and work product protection, the information in the “Approval Required?” columns was prepared by counsel in Indiana, Missouri and Arizona and addresses issues specific to regulatory matters in those jurisdictions. The “Notes” at the bottom of the page expand on the information in those columns. They are clearly privileged and reflect the mental impressions of counsel in those states. The April 21, 2006, presentation in unredacted form has not been distributed outside of the Petitioners and its confidentiality has been maintained. The information should not be revealed.

The AG argues that historical financial information relating to the unregulated businesses of AWWC and KAWC should not be confidential and that financial

¹ AG Response at p. 2.

projections should be produced. His primary argument is that non-regulated operations are clearly a material factor in the divestment decision.²

The important factor here is that the information pertains to unregulated operations. While some historical information relating to unregulated operations is available in the public domain, the information requested by the LFUCG is not available there. It had to be specifically calculated and placed in the spreadsheet that was attached to the response to LFUCG 1-33. Both AWWC and KAWC compete with other firms in their unregulated operations and the disclosure of that information would place them at a competitive disadvantage. As to the requested projections, the Petitioners objected to the production of that information, and therefore did not produce it, because it is not final and is subject to change. It could be misleading and is of little probative value. Therefore, the projected information is not relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Interestingly, the AG argues that it should be produced because it factored into the RWE's decision to pursue the Proposed Transaction. Its reasons for pursuing the Proposed Transaction have nothing to do with the issues that must be decided under KRS 278.020. That statute does not require an examination of motive behind the change of control.

Moreover, the availability of this information in the public record could adversely impact the Proposed Transaction by virtue of having possibly misleading information in the public domain. Similarly, it could place the Petitioners in jeopardy of accusations of "gun jumping" violations.

For the foregoing reasons, and for the reasons set forth in their Motion for Confidential Treatment, the Petitioners respectfully request the Commission to grant

² AG Response at 3-4.

confidential treatment to all of the identified information, including the information that is the subject of the AG's response.

Respectfully submitted,

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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 26, 2006; that the Public Service Commission and other parties participating by electronic means have been notified of such electronic transmission; that, on July 26, 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 26, 2006, one (1) copy in paper medium will be served upon the following via U.S. Mail:

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