

**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' RESPONSE TO ATTORNEY
GENERAL'S MOTION TO COMPEL AND
MOTION FOR *IN CAMERA* REVIEW**

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 Response to the Motion of the Attorney General of the Commonwealth of Kentucky (“AG”) to Compel with Motion for an *In Camera* Review of Responses to Requests for Information. The Motion to Compel relates to redacted information while the Motion for *In Camera* Review relates to confidential information that has been highlighted in connection with Petitioners’ Motions for Confidential Treatment. Petitioners believe that the Motion to Compel should be denied, but Petitioners have no objection to an *in camera* review by the Commission of the confidential information that has been highlighted.

The information that is the subject of the Motion to Compel is submitted in response to Item No. 8 of the Commission Staff’s First Data Request and Item No. 45 of the Lexington-Fayette Urban County Government’s (“LFUCG”) First Request for

Information. Staff 1-8 called for the production reports related to the proposed merger and public offering that Petitioners have received from their financial advisers. LFUCG 1-45 called for the production of “all Board of Director minutes, and information provided to the Board of Directors of any of the Petitioners, **in which the change of control is discussed.**” (Emphasis added). The redacted information that the AG argues should have been produced is enumerated on Exhibit A of the AG’s Motion to Compel.¹

Item 1 on Exhibit A to the Motion to Compel relates to a presentation made by Goldman Sachs and the law firm, Cravath, Swaine & Moore, LLP, to AWWC on April 21, 2006, regarding the IPO execution process. The pages redacted at item 1(a) contain legal advice from Cravath, Swaine & Moore, LLP regarding compliance with the Sarbanes-Oxley legislation. It is clearly the rendition of legal advice and not subject to discovery. The pages redacted at Item 1(d) contain a discussion of various state regulatory issues and strategies and is legal advice gathered from attorneys in the various states where it was contemplated regulatory approvals would be required. That information is not subject to discovery because of the attorney-client privilege and the work product doctrine. The pages redacted at Item 1(e) relate to two issues: rate case information² and state regulatory issues and strategies in connection with the Proposed Transaction. As previously indicated, the rate case information is not responsive to Staff 1-8 because it does not relate to the proposed merger and public offering. The regulatory approval discussions are clearly protected from discovery by the attorney-client privilege and the work product doctrine.

¹ Items 1(b) and (c) on Exhibit A to the AG’s Motion to Compel should have been highlighted, rather than redacted, and were sent to the AG in highlighted form subject to the Confidentiality Agreement on August 7, 2006.

² The rate case information is contained on page 73 of the presentation and is discussed in the Petitioners’ Reply in Further Support of Motion for Confidential Treatment filed herein on July 26, 2006.

Items 2, 3 and 4 on Exhibit A to the Motion to Compel relate to the minutes of the Supervisory Board³ of RWE for September 16, 2005, November 4, 2005, and February 21, 2006, respectively. All of those pages were redacted because they do not contain discussions of the change of control, as requested by LFUCG. The pages identified in Item 2 contain discussions of Thames Water in England, problems in the international water business, the value of holdings in Chile, China, Thailand, Australia and the UAE in June 2004, and speculation about the reaction of the European financial markets to a sale of Thames Water and AWWC. The pages identified in Item 3 contain discussions about the strategy of RWE after the sale of Thames Water and AWWC, the European water business, Thames Water in England and Executive Board governance issues. The pages identified in Item 4 contain a discussion of a possible schedule for the sale of Thames Water, the purchase price for the sale of Chilean water activities and RWE dividend issues. None of these subjects are responsive to LFUCG 1-45 because they are not “discussions of the change of control.” Moreover, the disclosure of this unresponsive information could harm RWE in connection with its Thames Water operations, its remaining European water operations, its other European utility operations and its other global businesses.

Item 5 on Exhibit A to the Motion to Compel is a presentation to the RWE Supervisory Board on September 16, 2005. The redacted pages relate to Thames Water, the water business in eight countries (not including the United States) and possible strategies for the purchase of other non-water businesses in countries other than the United States. Again, these redacted pages do not contain “discussions of the change of

³ Petitioners believe that RWE’s Supervisory Board is the counterpart of a board of directors in the United States.

control.” Item 6 on Exhibit A to the Motion to Compel is a November 4, 2005, presentation to the RWE Supervisory Board. The redacted pages contain a discussion of RWE’s European acquisition strategy and no discussion of the change of control. Thus, the redacted pages in Items 5 and 6 contain no information responsive to LFUCG 1-45. Like the information in the minutes, the disclosure of this information could be very harmful to RWE in its core business operations.

As to the Motion for an *In Camera* Review of Responses to Requests for Information, Petitioners frankly assumed that the reason for highlighting the confidential information on one copy of the documents is to facilitate such a review. Petitioners have no objection to such *in camera* review. Petitioners, however, believe that all of the information highlighted must remain confidential as set forth in their Motions for Confidential Treatment filed on July 11, 2006, and July 17, 2006, and their Reply in Further Support of Motion for Confidential Treatment filed on July 26, 2006, herein. The information highlighted is exempt from disclosure under the Open Records Act and was designated “confidential” consistent with the Commission’s rulings in the 2002 change of control cases involving the Petitioners.

Conclusion

Companies that appear before this Commission to obtain approval of a divestiture should not be required to disclose sensitive business information that is not responsive to the data requests in the case and is irrelevant to the proceeding. Similarly, such companies should not be expected to surrender their rights under the attorney-client privilege or the work product doctrine. For all of the reasons set forth above, the Motion to Compel should be denied.

As to the Motion for an *In Camera* Review of Responses to Requests for Information, Petitioners are confident the Commission will undertake sufficient examination of the material to rule on the Motions for Confidential Treatment.

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 August 9, 2006; that the Public Service Commission and other parties participating by electronic means have been notified of such electronic transmission; that, on August 10, 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 August 9, 2006, one (1) copy in paper medium will be served upon the following via U.S. Mail:

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