

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE JOINT PETITION OF KENTUCKY-AMERICAN)
WATER COMPANY, THAMES WATER AQUA) Case No. 2006-00197
HOLDINGS GMBH, RWE AKTIENGESELLSCHAFT)
THAMES WATER AQUA US HOLDINGS, INC.,)
AND AMERICAN WATER WORKS COMPANY,)
INC. FOR APPROVAL OF A CHANGE IN CONTROL)
OF KENTUCKY-AMERICAN WATER COMPANY)

ATTORNEY GENERAL'S RESPONSE
TO JOINT PETITIONERS' REQUESTS
FOR CONFIDENTIAL TREATMENT

The Attorney General, through counsel in his Office of Rate Intervention, submits his response to Joint Petitioners' requests for confidential treatment for certain information. While some of the material may warrant confidential treatment, the requests seek to render confidential some information that does not, on its face, warrant such treatment. Further, the Attorney General submits his response regarding the relevancy of information concerning non-regulated activity. In support of his position, the Attorney General states the following.

On 11 June 2006, Joint Petitioners filed responses to requests for information from the Public Service Commission Staff, Lexington-Fayette Urban County Government, and the Office of the Attorney General. In tandem with the responses, Joint Petitions filed a Motion for Confidential Treatment for certain information alleged to warrant confidential treatment. On 17 July 2006, Joint

Petitioners filed supplemental responses along with a Motion for Confidential Treatment of Board Materials.

Joint Petitioners “bear the burden of demonstrating that unfair commercial advantage will result to their competitors from disclosure of materials.”¹ To meet this burden, they must demonstrate that disclosure will give their competitors “substantially more than a trivial unfair advantage,” and the damage must be “more than merely speculative.”²

Commission Staff request Item No. 8 asks for the following:

Provide all reports related to the proposed merger and public offering that Joint Petitioners, either collectively or individually, have received from their financial advisors.

With regard to the “Presentation Regarding IPO Execution Process, April 21, 2006,” page 73 contains a table with a state-by-state summary with redactions of information concerning the status of rate case applications for a number of jurisdictions. Information concerning rate case planning does not enjoy any tradition of being considered confidential.³ There is no demonstration of any harm or significant threat of harm. This information does not warrant confidential treatment.

¹ *In the Matter of: Application for Approval of the Transfer of Control of Kentucky-American Water Company to RWE Aktiengesellschaft and Thames Water AQUA Holdings GmbH*, Case No. 2002-00018, Order, 12 April 2002, page 4.

² Case No. 2002-00018, Order, 12 April 2002, page 4, citing *Southeastern United Medigroup, Inc., v. Hughes*, 952 S.W.2d 195, 199 (Ky. 1997).

³ See, for example, *In the Matter of: Adjustment of the Rates of Kentucky-American Water Company*, Case No. 2000-00120, TE. Vol. I of II, pages 168, 169.

Lexington-Fayette Urban County Government request No. 33 asks for the following:

Provide the following information for AWW's O&M business and other non-regulated activities, as well as for each of its other types of business activities: actual and projected revenue for the period 1998-2008, actual and projected net revenue for the period 1998-2008, actual and projected operating profit for the period 1998-2008, and actual and projected operating margin for the period 1998-2008.

With regard to this request, the Joint Petitioners supply the historical information subject to a Motion for Confidential Treatment and do not provide the requested information regarding projections alleging, in part, that it "is not relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence." A blanket request for confidential treatment of historical information is not appropriate. Ironically, improving public access to financial information concerning American's operations is one of the things that the Joint Petitioners robustly allege as a benefit of RWE's divesture. There is no demonstration of any harm or significant threat of harm, and this information does not warrant confidential treatment.

A claim that the projections are not relevant is easily refuted by the Joint Petitioners. Specifically, the 16 September 2006 minutes for the Supervisory Board state that "while growth in the regulated basic business was largely on track (growth from investment), growth in the non-regulated business was well below expectations due to the weak distribution team." Non-regulated

operations are clearly a material factor in the divestment decision. Further, given that RWE itself takes the position that “if a decision were taken in favor of retaining the holding in American Water, it would be essential to install a new management in the U.S.,” the non-regulated business appears to stand as a clear threat to the viability of the spurned entity. The projections for the non-regulated operations are clearly relevant.

This challenge is a response to the requests on their face. The Attorney General does not waive or concede that any other information warrants confidential protection. Indeed, the Attorney General has yet to gain access to the redacted materials. The Attorney General and the Joint Petitioners plan to execute an agreement regarding access to confidential information, and they anticipate filing the agreement in the near term. If, after review of the redacted materials, it appears that additional information is subject to challenge, the Attorney General may seek further Commission consideration.

WHEREFORE, the Attorney General submits his Response and prays that the Commission deny confidential treatment to the rate case application information as well as the historical non-regulated operations information, and further that it reject Joint Petitioners’ claim that the projections for non-regulated operations is not relevant and enter an Order requiring their production.

Respectfully submitted,

GREGORY D. STUMBO
ATTORNEY GENERAL
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Notice of Filing

Counsel gives notice that (pursuant to Instruction 1 of the Commission's 5 June 2006, Order of procedure) the original and one photocopy in paper medium of the filing by hand delivery to Beth O'Donnell, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601 on 24 July 2006. Further, one copy in electronic medium has been filed by uploading the filing to the file transfer protocol site designated by the Executive Director on this 21st day of July 2006.

/s/ David Edward Spenard
Assistant Attorney General

Instruction 6 Certification

Per Instructions 6 of the 5 June 2006, Order of procedure, counsel certifies that the electronic version is a true and accurate copy of the document filed in paper medium, a copy in paper medium has been served on all the parties of record, the electronic version has been transmitted to the Commission, and the

Commission and other parties have been notified by electronic mail (on 21 July 2006) that the electronic version has been transmitted to the Commission.

/s/ David Edward Spenard
Assistant Attorney General

Certificate of Service

Counsel certifies that this response has been served by mailing a true and correct photocopy of the same, first class postage prepaid, to Lindsey W. Ingram, Jr., Lindsey W. Ingram III, Stoll Keenon Ogden, 300 West Vine Street, Suite 2100, Lexington, Kentucky 40507-1801; Foster Ockerman, Jr., Martin, Ockerman & Brabant, 200 N. Upper Street, Lexington, Kentucky 40507; Anthony G. Martin, P. O. Box 1812, Lexington, Kentucky 40588; and Leslye M. Bowman, David Barberie, Lexington-Fayette Urban County Government, Department of Law, 200 East Main Street, Lexington, Kentucky 40507 all on this 21st day of June 2006.

/s/ David Edward Spenard