

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 MOTION TO STRIKE
UNAUTHORIZED PLEADING

The Attorney General submits this Motion to Strike an unauthorized pleading of the Joint Petitioners. In support of the Motion, the Attorney notes the following.

It is the policy of the Public Service Commission that "all material on file with the Commission shall be available for examination by the public." 807 KAR 5:001 Section 7 (1). There is an exception available for information warranting confidential treatment. 807 KAR 5:001 Section 7 sets forth, in clear terms, the procedure for determining confidentiality. A party seeking confidential treatment may file a petition, and any person may respond to the petition. The regulation does not contemplate or authorize any further pleadings.

Joint Petitioners, desirous of having both a chance to "further" or otherwise beef-up their Petition as well as obtaining the last say, have chosen to

file a Reply to the Attorney General's Response to their Petition for confidential treatment. The Reply to patch up the Petition should be stricken.

Foremost, the Commission, through its regulation, provides an orderly, reasonable procedure, and the Joint Petitioners ought to respect that procedure (using the Petition as the vehicle for making its case as to why the material warrants confidential treatment rather than using the Petition as a trial balloon). Joint Petitioners' Reply to supplement the Petition reopens discussion after the time for talking has come to an end.

The Attorney General does not need an opportunity for submitting a Sur-reply to the Petition as supplemented. The Commission is already well-aware of the fact that "rate freezes" are a frequent condition for change of control approvals in this and other jurisdictions; therefore, the relevancy of rate case planning in this and other jurisdictions and the impact on the financial ability of the proposed company is beyond cavil. Likewise, the Commission is also well-aware of the fact that the regulated and non-regulated operations of American Water Works are simply different parts of the same vessel such that the relevancy of the threat of dropping to the bottom of the financial Ocean due to a gapping hole in AWW via its non-regulated operations is likewise not subject to legitimate challenge.

This Motion may engender another reply from the Joint Petitioners. There is a possibility that such a response by Joint Petitioners could assist the Commission and other parties by explaining a new theory raised in their

unauthorized Reply. Specifically, in light of the fact that the Application/Petition contains discussion (for example, the testimony of Ellen C. Wolf) as to why RWE is seeking to divest itself of American Water and Kentucky American¹ in tandem with the fact that Joint Petitioners vociferously proclaim the applicability of KRS 278.020(6) (and its 120 day time limit) which by its terms mandates Commission inquiry into whether the transaction is, among other things, “for a proper purpose” and in the “public interest,” why has there been a change in Joint Petitioners’ position regarding the relevancy of motive and discovery of evidence that happens to bear directly upon whether this transaction is for a proper purpose and in the public interest.²

When responding to a Petition for Confidential Treatment, the parties to this proceeding do have an entitlement to rely upon the previous representations of the Joint Petitioners (especially those in their Application/Petition) in formulating a response. The question raised by Joint Petitioners’ Reply is rather alarming. Is it now their position that the Wolf testimony in support of the Application/Petition is irrelevant and that it is no longer an object of the Joint Petitioners to demonstrate that the transaction is for a proper purpose and in the public interest?

¹ Application/Petition, Wolf testimony, page 10.

² On this point, the Attorney General wants to make clear that the information sought bears directly upon the managerial and financial ability of the proposed “divested” American Water Works. The information sought bears directly upon the inquiry necessary under KRS 278.020 (5). The Attorney General still contends that Subsection 6 has not been activated. Moreover, discovery regarding motive is in order given, for example, Ellen Wolf’s testimony as to why RWE is seeking to divest itself of American Water and Kentucky American (Application/Petition, Wolf, page 10). It is **Joint Petitioners** who opened the door for an inquiry into motive.

Ultimately, it is the Commission rather than the Joint Petitioners that makes the determination of the information that warrants exclusion from the record, the information that warrants confidential treatment, and the information that appears as part of the public record. Thus, the Commission should proceed with its review of all of the material at issue.

WHEREFORE, the Attorney General moves to Strike the unauthorized supplementation of the Joint Petitioners' Petition and affirmatively requests that this Commission proceed with a review of **all information** that the Joint Petitioners seek to withhold and determine the information that they are entitled to withhold from the record, the information that warrants confidential treatment, and the information that does not warrant confidential treatment.

Respectfully submitted,

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ATTORNEY GENERAL
/s/ David Edward Spenard
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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 28th 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 27th day of July 2006.

/s/ David Edward Spenard
Assistant Attorney General

Instruction 6 and Instruction 11 Certification

Per Instructions 6 and 11 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 27 June 2006) that the electronic version has been transmitted to the Commission. The electronic version has also been served on all the parties of record.

/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 27 July 2006.

/s/ David Edward Spenard