

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 COMPEL

With

MOTION FOR AN *IN CAMERA* REVIEW OF
RESPONSES TO REQUESTS FOR INFORMATION

The Attorney General, through counsel in his Office of Rate Intervention, moves the Commission to compel the Joint Petitioners to provide non-redacted responses to certain requests for information. Further, he also moves for an *in camera* review of the Joint Petitioners' redacted responses. In support of his motions, the Attorney General states the following.

Joint Petitioners bear the burden to demonstrate that the material they seek to withhold from public disclosure warrants confidential treatment. In the present action, the Attorney General and the Joint Petitioners have entered into a confidentiality agreement under which the Joint Petitioners provide certain information to the Attorney General that is not presently in the public record.

This information will be held as confidential pending a Commission determination as to whether the information warrants confidential treatment.

In addition to the burden to demonstrate that materials are confidential (not subject to public disclosure), the Joint Petitioners likewise have a burden to demonstrate that the information that they seek to withhold completely warrants such treatment. Specifically, the Joint Petitioners have chosen to redact and withhold from any disclosure (even under the confidentiality agreement) certain information bearing upon the managerial, financial, and technical abilities of Joint Petitioners. For easier reference the Attorney General files a list of those items as Exhibit A to these Motions.

It appears that Joint Petitioners have made a blanket demand to withhold from any review or consideration materials that, while possibly confidential, should be made available. Additionally, it does not appear that some of the redacted material even merits confidential treatment. In order to withhold information from the public record, there must be a legitimate basis for granting confidential treatment and the burden to establish such a basis falls, in this instance, solely upon Joint Petitioners (who may not meet this burden by a blanket request or mere conclusive statements). In order to completely withhold information, there must be a legitimate basis for granting such an extreme protection. Again, the burden falls upon Joint Petitioners, and they must demonstrate the necessity for (not simply the convenience of) withholding the information.

One ready manifestation supporting the concerns of the Attorney General is the fact that Joint Petitioners have chosen to withhold from any disclosure the mere titles or headings on some of the documents. This is not simply withholding the information from public inspection (which is questionable on its face). This is an effort to withhold the information from any review.

The Commission's policy is one of public access to information. The Commission, nonetheless, provides an opportunity for parties to demonstrate the necessity for withholding information from the public record. In the present case, there is an issue of public access. As importantly, however, there is also an issue of access to information that may warrant confidential treatment but is being withheld entirely. Such withholding should only take place under the narrowest of circumstances following a sufficient demonstration that the information compels such extreme protection.

The Attorney General moves the Commission to compel Joint Petitioners to provide non-redacted copies of the materials referenced on exhibit A; and, furthermore, moves the Commission to conduct an *in camera* review of the all of the materials in order to ascertain the validity of the claim for confidentiality¹ as well as the claim of justification for the complete exclusion from consideration for the evidence at issue.

¹ The Commission may be reminded of Case No. 2002-00018, the original transfer case wherein RWE acquired control over AWW and KAW. In that case, the Joint Applicants conducted themselves in a similar fashion by claiming the need for confidential of numerous pages of documents which were ultimately determined non-confidential.

WHEREFORE, the Attorney General moves the Commission to compel the Joint Petitioners to provide non-redacted copies of the material listed in exhibit A and to conduct an *in camera* review of all of the purported confidential documents to ascertain the validity of the claim of confidentiality and of their complete exclusion.

Respectfully submitted,

GREGORY D. STUMBO
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 8 August 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 7th day of August 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 7 August 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 7th day of August 2006.

/s/ David Edward Spenard

EXHIBIT A

1. Presentation Regarding IPO Executive Process (April 21, 2006)
Filename: IPO Kick-Off Presentation_21-Apr-06_FINAL Redacted9.pdf
 - a. pages 9-10,
 - b. pages 15-16,
 - c. page 49,
 - d. pages 55-57, and
 - e. pages 73-87.

2. RWE Supervisory Board Minutes (September 16, 2005)
Filename: KAW_R_1LFDR_45_ATT01_CONF_071706.pdf (pp. 1-10)
 - a. pages 3-4,
 - b. page 5, and
 - c. pages 6-8.

3. RWE Supervisory Board Minutes (November 4, 2005)
Filename: KAW_R_1LFDR_45_ATT01_CONF_071706.pdf (pp. 11-22)
 - a. page 3.
 - b. pages 4-7,
 - c. pages 8-9,
 - d. page 11, and
 - e. pages 11-12.

4. RWE Supervisory Board Minutes (February 21, 2006)
Filename: KAW_R_1LFDR_45_ATT01_CONF_071706.pdf (pp. 23-24)
 - a. pages 1-2.

5. Presentation to RWE Supervisory Board, Strategic Alignment of the Group (September 16, 2005)
Filename: KAW_R_1LFDR_45_ATT02_CONF_071706.pdf (pp. 1-28)
 - a. pages 8-10.
 - b. pages 12-14.
 - c. page 21, and
 - d. pages 25-26.

6. Presentation to RWE Supervisory Board, Project Noah (November 4, 2005)
Filename: KAW_R_1LFDR_45_ATT02_CONF_071706.pdf (pp. 29-)
 - a. pages 7-8.