

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

O R D E R

Joint Petitioners<sup>1</sup> have moved for confidential treatment for certain information relating to the business affairs of RWE Aktiengesellschaft (“RWE”) and American Water Works Company (“AWWC”). The Attorney General (“AG”) has responded in opposition to certain portions of that motion. Having reviewed the materials at issue and the parties’ pleadings, we find the motions should be granted.<sup>2</sup>

During the discovery phase of this proceeding, Commission Staff and Lexington-Fayette Urban County Government (“LFUCG”) requested that the Joint Petitioners provide all reports from the Joint Petitioners’ financial advisers related to the proposed transfer of control transaction<sup>3</sup> and all board of director minutes and information

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<sup>1</sup> “Joint Petitioners” are: Kentucky-American Water Company; American Water Works Company; Thames Water Aqua US Holdings, Inc.; Thames GmbH; and RWE Aktiengesellschaft.

<sup>2</sup> The Commission ruled upon these motions at the hearing that was held in this matter on August 17, 2006. By this Order, we affirm those rulings and provide the reasoning for our decision.

<sup>3</sup> Commission Staff’s First Information Request to Joint Petitioners, Item 8.

provided to any Board of Directors in which change of control is discussed.<sup>4</sup> LFUCG further requested financial information regarding AWWC's unregulated lines of business.<sup>5</sup> Joint Petitioners provided this information, but also petitioned for confidential treatment of these responses.<sup>6</sup>

Joint Petitioners argue that the financial adviser's reports that Commission Staff requested contain financial and other confidential information about RWE and AWWC that is not available to the public and that competitors could use to gain a competitive advantage over these entities. The information could also be used by entities in the security industry to gain a financial advantage over RWE in "the negotiation of relationships and agreements relating to the Proposed Transaction" and possibly make the proposed transaction more costly to RWE.<sup>7</sup> Public disclosure of some of the information contained in the materials at issue, Joint Petitioners further assert, could constitute an offer to sell and would violate federal security laws that prohibit offers to sell securities prior to the filing of a registration with the Securities and Exchange Commission. Finally, Joint Petitioners argue that the materials in question also contain information that is protected by the attorney-client privilege and work product privilege.

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<sup>4</sup> LFUCG's Initial Requests for Information, Item 45.

<sup>5</sup> Id. at Item 33.

<sup>6</sup> The AG has entered into a protective agreement with Joint Petitioners regarding the materials in question and has been provided a non-redacted copy of most of the materials in question. Joint Petitioners have continued to withhold some of the materials from the AG on the grounds that these materials are non-responsive or are exempted from discovery under the attorney-client privilege or work product privilege. See Order of August 17, 2006.

<sup>7</sup> Petitioners' Motion for Confidential Treatment at 2.

Joint Petitioners argue that portions of the presentations to the board of directors and of the minutes of the board of directors' meetings contain sensitive commercial or proprietary information whose disclosure would unfairly advantage RWE's competitors. They further argue that the disclosure of this information could adversely affect the proposed public offering of AWWC stock and could violate U.S. security laws that prohibit offers to sell securities prior to the filing of a registration statement with the Securities and Exchange Commission.

As to the documents that relate to AWWC's unregulated lines of business, Joint Petitioners argue that the documents contain information that is sensitive commercial or proprietary information whose disclosure would unfairly advantage AWWC's competitors. They note the information could be used by AWWC's competitors in these lines of businesses to underprice or underbid AWWC entities. They further assert that such information is not relevant to the ultimate issues before the Commission.

While generally silent on Joint Petitioners' motion, the AG objects to confidential treatment being afforded to two sets of materials. Referring to a table that contains a state-by-state summary of the status of rate case applications, he notes that information concerning rate case applications is not generally considered confidential and that Joint Petitioners have failed to demonstrate any harm resulting from its disclosure. Similarly, he notes that Joint Applicants' projections regarding AWWC's non-regulated lines of business are relevant as the level of growth in this sector is "clearly a material factor in the divestment decision."<sup>8</sup>

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<sup>8</sup> AG's Response at 4.

Having considered the motions and being otherwise sufficiently advised, the Commission finds that KRS 61.878(1)(c) exempts from public inspection the information for which the Joint Applicants seek confidential treatment and that the information should be afforded confidential treatment.

IT IS THEREFORE ORDERED that:

1. Joint Petitioners' Motion for Confidential Treatment of Board Materials and Motion for Confidential Treatment is granted.

2. Confidential treatment is accorded to the requested portions of Item 8 of Joint Petitioners' Response to Commission Staff's First Information Request and Items 33 and 45 of LFUCG's Initial Requests for Information.

3. Joint Petitioners shall make available upon request an unredacted copy of the material deemed confidential, except those materials expressly identified in the Commission's Order of August 17, 2006, to any party in this proceeding provided the requesting party enters into a protective agreement with Joint Petitioners regarding the use and disclosure of such materials.

Done at Frankfort, Kentucky, this 29<sup>th</sup> day of August, 2006.

By the Commission

ATTEST:



Executive Director