

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

IN THE MATTER OF:

**NOTICE OF ADJUSTMENT OF THE RATES OF)
KENTUCKY-AMERICAN WATER COMPANY) CASE NO. 2007-00143
EFFECTIVE ON AND AFTER MAY 30, 2007)**

**PETITIONER'S PETITION FOR
CONFIDENTIAL TREATMENT OF RESPONSES TO
COMMISSION STAFF'S DATA REQUEST 21**

Kentucky-American Water Company ("KAWC") moves the Kentucky Public Service Commission ("Commission") pursuant to 807 KAR 5:001, Section 7, and KRS 61.878(1)(c) to grant confidential treatment to certain information relating to American Water Works, Inc.'s (AWWC) financial and business affairs. In support of this motion Petitioner states as follows:

1. On June 4, 2007, the Commission's Staff served their Second Set of Information Requests on Petitioner in this proceeding which, among other things, in Item 21(e)(1), requested Petitioner to provide "For each job title and/or classification set forth in Kentucky-American's Response to Item 21(d), provide: (a) The minimum education, training, and experience necessary to hold the position." Item 21(d) asked for a list by job title or classification of each service company employee who had hours assigned or allocated to Kentucky-American.

2. The Kentucky Open Records Act exempts from disclosure certain commercial information. KRS 61.878(1)(c). To qualify for this exemption and, therefore, maintain the confidentiality of the information, a party must establish that disclosure of the commercial information would permit an unfair advantage to competitors of the party seeking confidentiality.

3. The response to Item 21(e)(1) consists of a list of 472 employment positions by job title with the qualifications (education, licenses and experience) for each position. This information has been created and compiled by AWWC over time by an investment of time and money. It contains sensitive commercial and proprietary information, the disclosure of which would unfairly advantage AWWC's competitors. None of this information has been made available to the public. This information could be used by AWWC's competitors to gain a competitive advantage over it with the knowledge of the information contained therein.

4. The description of the responsive document herein demonstrates that it merits confidential treatment. If the Commission disagrees, however, it must hold an evidentiary hearing to protect the due process rights of Petitioner and supply the Commission with a complete record to enable it to reach a decision with regard to this matter. Utility Regulatory Commission v. Kentucky Water Service Company, Inc., Ky. App., 642 S.W.2d 591, 592-94 (1982).

5. The information for which Petitioner is seeking confidential treatment is not known outside of Petitioner and it has not disseminated within Petitioner except to those employees with a legitimate business need to know and act upon the information.

6. Petitioner does not object to disclosure to the parties to this proceeding upon the execution of a protective agreement, a copy of which is attached and has been executed by the Attorney General in other proceedings and this one before this Commission. Two copies have been filed with the Commission under seal for its use in this proceeding on a confidential basis.

WHEREFORE, Petitioner respectfully request that the Commission grant confidential treatment for the information at issue, or in the alternative, schedule an evidentiary hearing on all

factual issues while maintaining the confidentiality of the information pending the outcome of the hearing.

Respectfully submitted,

Lindsey W. Ingram, Jr.
Lindsey W. Ingram III
STOLL KEENON OGDEN PLLC
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507-1801
Telephone No. 859-231-3000
Facsimile No.: 859-253-1093

BY: Lindsey W. Ingram Jr

Attorneys for Kentucky-American Water Company

CERTIFICATION

This is to certify that a true and accurate copy of Kentucky-American Water Company's Petition has been electronically transmitted to the Public Service Commission on June 25, 2007; that the Public Service Commission and other parties participating by electronic means have been notified of such electronic transmission; that, on June 25, 2007, 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 June 25, 2007, one (1) copy in paper medium will be served upon the following:

David Edward Spenard, Esq. (hand delivery)
Office of the Attorney General
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601
david.spenard@ag.ky.gov
dennis.howard@ag.ky.gov
laura.rice@ag.ky.gov

David J. Barberie, Esq. (hand delivery)
LFUCG
Department of Law
200 East Main Street
Lexington, Kentucky 40507
dbarberi@lfucg.com
lbowman@lfucg.com

David F. Boehm, Esq. (overnight delivery)
Boehm, Kurtz & Lowry
36 East Seventh Street
Suite 1510
Cincinnati, Ohio 45202
dboehm@bkllawfirm.com
mkurtz@bkllawfirm.com

Joe F. Childers, Esq. (hand delivery)
Getty & Childers, PLLC
1900 Lexington Financial Center
250 West Main Street
Lexington, Kentucky 40507
jchilders@gettychilders.com

STOLL KEENON OGDEN PLLC

By 

Attorneys for Kentucky-American Water Company

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (“Agreement”) is made and entered into effective _____, 2007 by and between **KENTUCKY-AMERICAN WATER COMPANY** (“KAWC”), the “Petitioner”) and the **ATTORNEY GENERAL OF THE COMMONWEALTH OF KENTUCKY** (“AG”) and his respective representatives as identified on Exhibit A hereto.

WHEREAS, Petitioner has filed a Petition with the Kentucky Public Service Commission (“Commission”) for approval of a change in its rates; and

WHEREAS, on June 25, 2007, Petitioner filed a Petition seeking confidential treatment for the response to the Public Service Commission's second data request, Item 21(e)(1); and

NOW, THEREFORE, for good and sufficient consideration, the parties agree and covenant as follows:

1. AG shall not publicize or otherwise disclose the Confidential Information to any third party and shall strictly limit access to the Confidential Information to counsel regularly employed by AG, secretaries, paralegals, and other staff of such attorneys or counsel, and bona fide outside experts or consultants and their employees (collectively the “Representatives”) who have a need to know the Confidential Information for purposes of AG’s participation in Case No. 2007-00143. Prior to accessing the Confidential Information, each of the Representatives shall execute a non-disclosure agreement and attached as Exhibit A to this Agreement. Upon any actual or threatened violation of this Agreement by AG, the parties acknowledge that Petitioner’s remedy at law will be inadequate and that Petitioner will be irreparably harmed by such violation. As a result, Petitioner shall be entitled to preliminary and other injunctive relief against such violation without being required to post a bond therefor.

2. AG shall strictly limit his and the Representatives' use of the Confidential Information to use in Case No. 2007-00143 before the Commission and any appeals from this case.

3. AG shall not use the Confidential Information for purposes other than to prepare for or try this case. AG shall not use the Confidential Information for any other purpose in this jurisdiction or in any other jurisdiction.

4. AG shall not disclose or permit the disclosure of the Confidential Information to any persons, including officers, employees and consultants, except as expressly permitted herein.

5. AG shall take all steps reasonably necessary to see that no person receiving access to the Confidential Information shall use, disclose, copy or record the Confidential Information for any purpose other than the preparation or conduct of this case.

6. AG shall maintain a register in which his counsel shall currently record the name and position of persons who have had access to the Confidential Information.

7. AG shall not disclose the Confidential Information to any outside experts or consultants who at any time during their employment or retention by the AG are also employed or retained by a competitor of the Petitioners.

8. Petitioners and AG recognize that there are risks inherent in the transmission, storage, and utilization of electronic information including risks inherent in the use of electronic mail. Petitioners and AG will use their best efforts to safeguard confidential information in electronic media; however, the Petitioners and AG do not warrant or otherwise guarantee the safety of information in electronic media from inadvertent disclosure to or access by non-parties who handle the information (such as a non-party computer server through which the information

passes during its normal course) or from acts of non-parties (such as theft or other improper appropriation by “hackers,” etc.).

9. AG shall not disclose the Confidential Information in whole or in part during any aspect of this proceeding except under seal and shall not refer to such Confidential Information in open proceedings except in a manner which maintains the confidentiality of the Confidential Information.

10. The non-disclosure agreement to be executed by each Representative shall require AG and such Representative to read a copy of this Agreement and certify in writing on Exhibit A that he or she has reviewed this Agreement and agrees to be bound by its terms before disclosure of the Confidential Information to such Representative will be made.

11. Any notes made by AG or the Representatives deriving from the Confidential Information shall be deemed to also be Confidential Information hereunder and may not be disclosed or used other than as allowed by this Agreement. Upon demand for return of the information, any notations or other work product of AG, his counsel or his consultants made or contained on the information shall be redacted prior to return of the information to Petitioners. Following the conclusion of Case No. 2007-00143, on demand, all physical forms of the Confidential Information shall be returned to Lindsey W. Ingram, III, Stoll Keenon Ogden, PLLC, 300 West Vine Street, Suite 2100, Lexington, Kentucky 40507. With regard to the AG’s case file and work-product (notes, memoranda, etc.) containing Confidential Information, the AG will observe its legal obligations regarding the retention and destruction of the subject materials.

12. If AG desires or is requested to disclose any Confidential Information obtained as a result of the examination thereof, whether in testimony filed by or through cross-examination

of any witness or otherwise, AG shall notify Petitioner in advance of the proposed use and shall meet with Petitioner's representatives to attempt in good faith to establish a procedure that will accommodate the needs of AG for disclosing the information without risking its public disclosure. If Petitioner and AG are unable to agree on a means of preventing public disclosure of the Confidential Information, Petitioner and AG will submit these issues to the Commission for resolution before the information is placed in the public record.

13. Each party to this Agreement will act in good faith, and neither party to this Agreement will do anything to deprive any other party of the benefit of this Agreement. In case of any disagreement between the parties with regard to the meaning or application of the Agreement, or either party's compliance with it, the parties agree that the Commission is the sole and exclusive forum for resolving such disagreement or considering any alleged breach of this Agreement, and the remedies within the jurisdiction of the Commission are the only available remedies except that the Agreement does not restrict the Petitioner from seeking any injunctive relief in the Franklin Circuit Court to which they believe that they are otherwise entitled to seek; furthermore, it does not extinguish any right to judicial review of actions by the Commission.

14. In the event the Commission should rule that any of the information should be removed from the restrictions imposed by this Agreement, no party shall disclose the Confidential Information covered by the Agreement or use it in the public record for twenty (20) business days, unless authorized to do so by the providing party or a court of competent jurisdiction. The provisions of this paragraph are made to enable the providing party to seek a stay or other relief from the Commission or other court order removing the restriction of this Agreement from information claimed by the providing party to be confidential or proprietary.

15. AG's participation in this Agreement shall not be construed as an admission that

the information claimed to be confidential and proprietary is, in fact, confidential and proprietary, or as a waiver of any right to assert the information is not confidential or proprietary before the Commission or any court of competent jurisdiction.

16. This Agreement shall not apply to information that is a part of the public domain or for which confidential treatment is not sought.

17. This Agreement shall be governed by the laws of the Commonwealth of Kentucky, without regard to its principles of conflicts of law. This Agreement shall bind the parties to it from the effective date set forth above. Every executed copy of this Agreement will be deemed an original.

EXECUTED THIS _____ day of _____ 2007.

KENTUCKY-AMERICAN WATER COMPANY

By: _____

Name: _____

Title: _____

THAMES WATER AQUA HOLDINGS GMBH

By: _____

Name: _____

Title: _____

RWE AKTIENGESELLSCHAFT

By: _____

Name: _____

Title: _____

THAMES WATER AQUA US HOLDINGS, INC.

By: _____

Name: _____

Title: _____

AMERICAN WATER WORKS COMPANY, INC.

By: _____

Name: _____

Title: _____

ATTORNEY GENERAL OF THE
COMMONWEALTH OF KENTUCKY

By: _____

Name: _____

Title: _____

