

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

IN THE MATTER OF:)
)
NOTICE OF ADJUSTMENT OF THE RATES OF) **CASE NO. 2008-00427**
KENTUCKY-AMERICAN WATER COMPANY)
EFFECTIVE ON AND AFTER NOVEMBER 30, 2007)

**PETITION FOR CONFIDENTIAL TREATMENT
OF RESPONSES TO ITEMS 2 AND 14 OF THE COMMISSION
STAFF’S FIRST SET OF INFORMATION REQUESTS**

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 information relating to the accounting and employment affairs of KAWC and its parent company. In support of this Petition, KAWC states as follows:

1. On October 15, 2008, the Commission Staff served its First Set of Information Requests on KAWC. Items 2 and 14 of those requests ask for KAWC “internal accounting manuals, directives, policies, and procedures” and “all wage, compensation, and employee benefits studies, analyses, and surveys that Kentucky-American has conducted, commissioned, or used,” respectively.

2. The Kentucky Open Records Act exempts from disclosure certain confidential or proprietary 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 information would permit an unfair commercial advantage to competitors of the party seeking confidentiality.

3. The response to Item 2 consists of 442 pages of accounting policies and procedures that are the product of extensive time and money invested by KAWC's parent company, American Water Works Company, Inc. ("AWWC"). The response to Item 14 consists of 449 pages of salary survey information that is also the product of extensive time and money invested by AWWC. Both responses consist of commercial information that is confidential and proprietary, the disclosure of which would unfairly advantage AWWC's and/or KAWC's competitors. If those competitors have free access to the same information that AWWC expended substantial resources to develop, they will derive an unfair commercial advantage.

4. The description of the responsive documents above demonstrates that they merit confidential treatment. If the Commission disagrees, however, it must hold an evidentiary hearing to protect the due process rights of KAWC and so that the Commission will have 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. KAWC does not object to the disclosure of the information at issue to the parties to this proceeding upon the execution of a confidentiality agreement, a copy of which is attached. Two paper copies and a CD containing the documents in electronic medium have been filed with the Commission under seal for its use in this proceeding on a confidential basis.

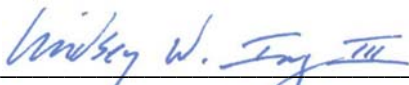
WHEREFORE, KAWC respectfully requests that the Commission grant confidential treatment for the information at issue, or in the alternative, schedule an evidentiary hearing on all factual issues while maintaining the confidentiality of the information pending the outcome of the hearing.

Respectfully submitted,

A.W. Turner, Jr., General Counsel
KENTUCKY-AMERICAN WATER COMPANY
2300 Richmond Road
Lexington, Kentucky 40502
A.Turner@amwater.com

and

STOLL KEENON OGDEN PLLC
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507-1801
Telephone: (859) 231-3000
L.Ingram@skofirm.com

BY: 

Lindsey W. Ingram III
Attorneys for Kentucky-American Water Company

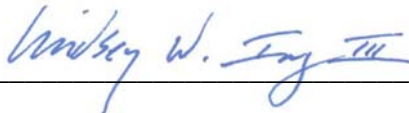
CERTIFICATE

In accordance with Ordering Paragraph No. 5 of the Commission's October 30, 2008 Order, this is to certify that Kentucky-American Water Company's November 14, 2008 electronic filing of this Petition is a true and accurate copy of the documents to be filed in paper medium; that the electronic filing has been transmitted to the Commission on November 14, 2008 (without confidential attachments); that an original and one copy of the filing will be delivered to the Commission on November 17, 2008 (with attachments under seal); and that, on November 14, 2008, notification of the electronic filing will be provided to the Commission and the following via electronic mail:

David Edward Spenard
Office of the Attorney General
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601
david.spenard@ag.ky.gov
dennis.howard@ky.gov
heather.kash@ag.ky.gov

Willis L. Wilson
Leslye M. Bowman
LFUCG
Department of Law
200 East Main Street
Lexington, Kentucky 40507
wlw@lfucg.com
lbowman@lfucg.com

STOLL KEENON OGDEN PLLC

By 

Attorneys for Kentucky-American Water Company

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (“Agreement”) is made and entered into effective _____, 2008 by and between **KENTUCKY-AMERICAN WATER COMPANY** (“KAWC”) and the **ATTORNEY GENERAL OF THE COMMONWEALTH OF KENTUCKY** (“AG”) and his respective representatives as identified on attached Exhibit A.

WHEREAS, KAWC has filed an Application with the Kentucky Public Service Commission (“Commission”) for approval of a change in its rates (Case No. 2008-00427); and

WHEREAS, on November 14, 2008, KAWC filed a Petition seeking confidential treatment for the responses to Items 2 and 14 of the Commission Staff’s First Set of Information Requests (“Confidential Information”); 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. 2008-00427. Prior to accessing the Confidential Information, each of the Representatives shall execute a non-disclosure agreement, a copy of which is attached as Exhibit A to this Agreement. Upon any actual or threatened violation of this Agreement by AG, the parties acknowledge that KAWC’s remedy at law will be inadequate and that KAWC (for purposes of this Agreement, “KAWC” also includes American Water Works Company, Inc.)

will be irreparably harmed by such violation. As a result, KAWC shall be entitled to preliminary and other injunctive relief against such violation without being required to post a bond.

2. AG shall strictly limit his and the Representatives' use of the Confidential Information to use in Case No. 2008-00427 before the Commission and any appeals from that case.

3. AG shall not use the Confidential Information for purposes other than to prepare for or try Case No. 2008-00427. 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 American Water Works Company, Inc. or any of its affiliated companies, including KAWC.

8. KAWC 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. KAWC and AG will use their best efforts to safeguard Confidential Information in electronic media; however, KAWC 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 KAWC. Following the conclusion of Case No. 2008-00427, 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. At the option of the AG and the Representatives, the AG and the Representatives may certify the destruction of the physical forms of the Confidential Information as a means to satisfy the demand. 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. With regard to the Representatives' case file and work-product (notes, memoranda, etc.) containing Confidential Information, the Representatives shall certify the destruction of the material.

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 KAWC in advance of the proposed use and shall meet with KAWC'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 KAWC and AG are unable to agree on a means of preventing public disclosure of the Confidential Information, KAWC 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 KAWC 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 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 _____ 2008.

KENTUCKY-AMERICAN WATER COMPANY

By: _____

Name: _____

Title: _____

ATTORNEY GENERAL OF THE
COMMONWEALTH OF KENTUCKY

By: _____

Name: _____

Title: _____

