

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

IN THE MATTER OF:)	
)	
THE APPLICATION OF KENTUCKY-AMERICAN)	CASE NO. 2010-00036
WATER COMPANY FOR AN ADJUSTMENT OF)	
RATES ON AND AFTER MARCH 28, 2010)	

**KENTUCKY-AMERICAN WATER COMPANY’S
RESPONSE TO ATTORNEY GENERAL’S MOTION TO COMPEL
THE PRODUCTION OF CONSOLIDATING ACCOUNTING INFORMATION**

Kentucky-American Water Company (“KAWC”) responds to the Attorney General’s May 7, 2010 Motion to Compel Kentucky-American Water Company to Provide Consolidating Accounting Information (“AG’s Motion”). For the reasons set forth below, KAWC’s objections in Response to No. 97 of the Attorney General’s First Set of Information Requests should be sustained, and, thus, the AG’s Motion should be overruled.

In No. 97, the Attorney General seeks “consolidating accounting information for American Water Works for 2008 and 2009.” It also asks for KAWC to “show the amounts for each subsidiary by account and all eliminations and adjustments in the consolidation.” In its response to No. 97, KAWC objected to providing the information on various grounds. In addition to those objections, KAWC described the accounting consolidating process and described the types of accounting entries that get consolidated as the American Water Works Company, Inc. (“American Water”) consolidated financial statements are prepared. Those consolidated financial statements have been made available to the AG, but he seeks the consolidating accounting information. The consolidating information consists of offsetting inter-

company transactions that are eliminated so that the resulting consolidated financial statements are accurate.

The requested consolidating information is not relevant, not public and would be overly burdensome to produce. It is not relevant because American Water does not allocate any charges to KAWC. American Water Works Service Company, Inc. (“AWWSC”) allocates charges to KAWC (and its sister companies) in accordance with the governing contract, but the AG has already been provided abundant information relating to those allocations. For example, KAWC has already produced AWWSC invoices to KAWC which demonstrate the exact information the AG says he needs concerning the types and amounts of affiliate charges that are allocated to KAWC.¹

Those allocations are the subject of KAWC witness Patrick Baryenbruch’s testimony, but they are not allocations of expenses of the entity for which the consolidation occurs – American Water. The AG correctly points out that an issue in this case is the appropriate allocation of expenses to KAWC, but, again, there are no such expenses at the American Water level that are allocated or otherwise charged to KAWC or any other regulated subsidiary. Likewise, to the extent the AG wants to know expenses for KAWC as compared to its sister companies, KAWC has already provided the AG with that information as well.² Finally, to the extent the AG seeks to learn the allocation of borrowing costs made by American Water Capital Corporation to KAWC, KAWC will be happy to provide that information for any long-term debt KAWC currently owes to American Water Capital Corporation, and, in fact, has already provided borrowing cost information to the AG in: (1) its KRS 278.300 applications over the years; and (2) Exhibit 4 to Michael Miller’s testimony in this case.

¹ See KAWC’s response to Commission Staff’s Second Set of Information Requests, No. 19.

² See KAWC’s response to the AG’s First Set of Information Requests, No. 96.

Of course, the American Water consolidated statements are audited. For 2008 and 2009, PricewaterhouseCoopers (“PwC”) examined American Water’s affiliate transactions and American Water’s consolidating/elimination process. After reviewing that process and American Water’s management representations on the topic,³ PwC made no notes in its audit reports of any departures from GAAP related to those transactions. KAWC’s response to No. 97 refers the AG to the internet location⁴ of the American Water audited financial information and he is welcome to review that if he wishes. The 2009 American Water Annual Report provides a wealth of information concerning the consolidation process and reports the financial data for American Water’s regulated operations, non-regulated operations, and “other,” broken down into their respective segments.⁵

KAWC’s audited financial statements are instructive as well. The 2004 – 2008 KAWC audited financial statements were provided as part of Exhibit 28 to KAWC’s February 26, 2010 Application in this case. The 2009 KAWC audited financial statements were provided in response to No. 443 of the AG’s First Set of Information Requests. Those documents, along with KAWC’s management’s representations made in connection with the audit process, show: (1) KAWC recorded or disclosed in its financial statements its relationships and transactions with related parties, including sales, purchases, loans, transfers, leasing arrangements, guarantees, and amounts receivable or payable to those related parties;⁶ and (2) management fees

³ American Water management represented the following to PwC: (1) all consolidating entries were properly recorded (AG1, No. 181, p. 79 of 107); (2) all intracompany and intercompany accounts were eliminated or appropriately measured and considered for disclosure in the consolidated financial statements (AG1, No. 181, p. 79 of 107); and (3) all material relationships and transactions with related parties were properly recorded or disclosed in the consolidated financial statements (AG1, No. 181, p. 80 of 107).

⁴ See www.amwaterannualreport.com

⁵ See 2009 American Water Annual Report, “Segment Information,” Note 22, pp. 135-137.

⁶ See, for example, AG1, No. 181, p. 17 of 107. See also AG1, No. 443, p. 24 of 26 which

paid to AWWSC were appropriately allocated to KAWC in accordance with the January 1, 1989 contract between KAWC and AWWSC.⁷ Given the abundant information already provided in this case and in the American Water and KAWC audited financial statements, the AG has no need for the irrelevant consolidating information.

Additionally, the consolidating information is not public and it is confidential and proprietary. Much of it relates to non-regulated operations that have nothing to do with ratemaking in any location in which American Water has operations. The business and accounting information of the non-regulated operations could be used by competitors to their advantage. The AG is correct that confidentiality agreements have been executed in this case to protect some of the information that has been produced. However, due to the nature of the consolidating information, if it is ordered to be produced, KAWC requests an informal conference prior to production at which time the manner of production can be discussed so that any possibility of accidental disclosure by third parties can be eliminated.

Finally, production of the information is overly burdensome. The AG's Motion assumes that just because the consolidating information was produced for PwC, it is not burdensome to produce it for the AG. The information produced for PwC is both voluminous and complex. It is not in a single package easily produced because it is information that has developed over time with which PwC is familiar only due to its longstanding status as American Water's auditor. The AG has asked for the consolidating information "for each subsidiary by account and all eliminations and adjustments in the consolidation." American Water has 23 utility subsidiaries that provide water and wastewater services in 20 states. Producing the requested information for each subsidiary by account is necessarily burdensome.

describes, at Note 14, all "Related Party Transactions."

⁷ See, for example, AG1, No. 181, p. 20 of 107.

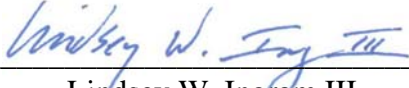
WHEREFORE, KAWC respectfully requests the denial of the AG's Motion. In the alternative, KAWC requests that if production of the information is ordered, an informal conference be set to determine the manner of production.

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

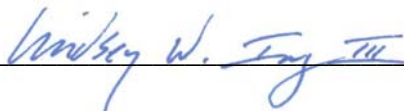
In accordance with Ordering Paragraph No. 6 of the Commission's February 16, 2010 Order, this is to certify that Kentucky-American Water Company's May 18, 2010 electronic filing is a true and accurate copy of the documents to be filed in paper medium (without confidential attachments); that the electronic filing has been transmitted to the Commission on May 18, 2010; that an original and one copy of the filing will be delivered to the Commission on May 19, 2010; and, that, on May 18, 2010, electronic mail notification of the electronic filing will be provided to the Commission and the following:

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

Iris G. Skidmore
Bates and Skidmore
415 West Main Street, Suite 2
Frankfort, Kentucky 40601
batesandskidmore@gmail.com

David J. Barberie
Leslye M. Bowman
LFUCG Department of Law
200 East Main Street
Lexington, Kentucky 40507
dbarberi@lfucg.com
lbowman@lfucg.com

STOLL KEENON OGDEN PLLC

By 

Attorneys for Kentucky-American Water Company