

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY-AMERICAN)
WATER COMPANY FOR AN ADJUSTMENT OF) CASE NO. 2010-00036
RATES SUPPORTED BY A FULLY)
FORECASTED TEST YEAR)

ORDER

The Attorney General ("AG") has moved to compel the production of consolidated accounting information for American Water Works Company ("AWWC") for 2008 and 2009. Kentucky-American Water Company ("KAWC") has filed a response in opposition to the motion. Finding that the AG has failed to demonstrate the relevance of the information for which production is sought, we deny his motion.

In accordance with the procedural schedule established in this matter, the AG requested that KAWC provide "consolidating accounting information for American Water Works for 2008 and 2009" and further requested that KAWC's response "show the amounts for subsidiary by account and all eliminations and adjustments to the consolidation."¹ Objecting to the request as overly burdensome and seeking information that was irrelevant and whose public disclosure would impair the competitive advantage of non-regulated subsidiaries, KAWC refused to provide the information. It instead provided a description of the process used to audit AWWC and prepare a consolidated balance sheet.² The AG then moved to compel KAWC's production of the requested information. KAWC has responded to this motion.

¹ AG's First Request for Information, Request 97 (filed Apr. 5, 2010).

² KAWC Response to AG's First Request for Information, Item 97 (filed Apr. 26, 2010).

In his Motion to Compel, the AG argues that KAWC's grounds for refusing to comply with his request are without merit. Asserting that production of the requested information is not burdensome, he states that AWWC consolidates its accounting information in the normal course of business and provides it for review to third parties. He further states that his offer to enter a non-disclosure agreement should satisfy any concerns regarding the production of confidential or sensitive information. As to the relevance of the requested information, the AG asserts that the information bears directly upon and could lead to the discovery of other relevant information on such issues as "capital structure, affiliated charges, the level of expenses, the per-customer comparison of expenses, and the relationship between the Company and its affiliates."³

The Commission agrees with the AG that the confidential nature of the material does not prevent its production. Commission regulations clearly provide that the confidential nature of requested documents does not excuse a party from responding to discovery requests.⁴ Moreover, the AG's willingness to enter a confidentiality agreement adequately addresses KAWC's concerns on this point. In its response, KAWC concedes by implication that the confidential nature of the material does not bar production of the documents.⁵

We further find that the record lacks sufficient evidence to support KAWC's contention that the request is overly burdensome. KAWC asserts that the requested

³ AG's Motion at 3 (filed May 7, 2010).

⁴ 807 KAR 5:001, Section 7(5)(a) ("No party to any proceeding before the commission shall fail to respond to discovery by the commission or its staff or any other party to the proceeding on grounds of confidentiality. If any party responding to discovery requests seeks to have a portion or all of the response held confidential by the commission, it shall follow the procedures for petitioning for confidentiality contained in this administrative regulation. Any party's response to discovery requests shall be served upon all parties, with only those portions for which confidential treatment is sought obscured.")

⁵ KAWC's Response to AG's Motion to Compel at 4 (filed May 18, 2010) (noting the need for additional measures to guard against accidental disclosure).

information is “voluminous and complex” and is “not in a single package easily produced because it is information that has developed over time.”⁶ It further asserts that producing the requested information for each of AWWC’s 23 subsidiaries by account is “necessarily burdensome.” KAWC, however, offers no other information regarding the size of the requested information or the time and expense required to compile and produce the requested information. A bare assertion is insufficient to sustain its objection to producing the information.

As to the relevance of the requested information, we find that the AG has failed to demonstrate that the information is relevant or will lead to the production of relevant information. The AG contends that the requested information is related to issues of “capital structure, affiliated charges, the level of expenses, the per-customer comparison of expenses, and the relationship between the Company and its affiliates,” but offers no supporting explanation. Given that AWWC provides no direct services to KAWC and does not allocate any charges to KAWC, we are unable to deduce the requested information’s relevance to this case. The AG’s bare assertion of relevance, without any further explanation, is not sufficient.⁷

Accordingly, the Commission HEREBY ORDERS that the AG’s Motion to Compel KAWC to Provide Consolidated Accounting Information is denied and KAWC’s objection to the AG’s Request for Information is sustained.

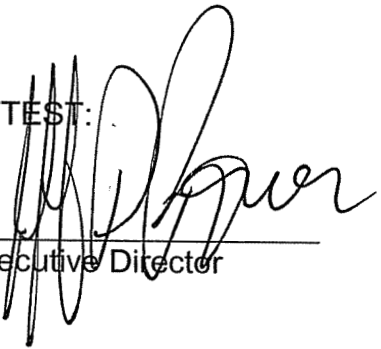
⁶ *Id.*

⁷ The Commission acknowledges that AWWC subsidiaries American Water Service Company, Inc. and American Water Capital Corporation provide services to KAWC. Documents and information regarding these services and transactions, including invoices, are already present in the record of this case and in other Commission cases.

By the Commission

ENTERED
AUG - 9 2010
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2010-00036