

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

**In the Matter of:**

APPLICATION OF KENTUCKY-AMERICAN WATER )  
COMPANY FOR A CERTIFICATE OF PUBLIC )  
CONVENIENCE AND NECESSITY AUTHORIZING ) CASE NO. 2012-00096  
THE CONSTRUCTION OF WATER TRANSMISSION )  
MAINS, BOOSTER PUMP STATION AND TWO )  
ELEVATED STORAGE TANKS FOR THE )  
NORTHERN DIVISION CONNECTION )

**PETITION OF KENTUCKY-AMERICAN WATER COMPANY FOR CONFIDENTIAL  
PROTECTION FOR RESPONSES TO CERTAIN DATA REQUESTS OF THE  
COMMISSION STAFF AND THE ATTORNEY GENERAL**

Kentucky-American Water Company (“Kentucky American”) hereby petitions the Kentucky Public Service Commission (“Commission”) pursuant to 807 KAR 5:001, Section 7, and KRS 61.878(1)(c) and (a) to grant confidential protection for the items described herein, which Kentucky American seeks to provide in response to the Commission’s Staff’s (“Staff”) Initial Data Request Item Nos. 2, 3, 44(a) and 65 and the Attorney General’s (“AG”) Initial Data Request Item No. 2. In support of this Petition, Kentucky American states as follows:

**Confidential or Proprietary Commercial Information (KRS 61.878(1)(c))**

1. The Kentucky Open Records Act exempts from disclosure certain commercial information. KRS 61.878(1)(c). To qualify for the exemption and, therefore, maintain the confidentiality of the information, a party must establish that the material is of a kind generally recognized to be confidential or proprietary, and the disclosure of which would permit an unfair commercial advantage to competitors of the party seeking confidentiality.

2. Staff Data Request No. 3 asks Kentucky American to provide “all correspondence, memoranda, electronic mail messages and any other documents since January 1,

2000 in which Kentucky-American or its agents discuss the condition of the Owenton Water Treatment plant and possible repairs to that plant.” In response to this Request, Kentucky American is providing bid information and tabulations.

3. Similarly, Staff Data Request No. 65 asks Kentucky American to provide “the bids submitted to Kentucky-American for the proposed facilities” and AG Data Request No. 2 asks Kentucky American to “provide the documentation (including work papers, memoranda, reports from third parties, etc.) through which the construction, permitting, and right-of-way costs were calculated for both proposals as well as any proposal not referenced in the Application.” In response to these Requests, Kentucky American is providing bids and its evaluation and tabulation of same. Bid information is provided in the Response to Staff Data Request No. 65, and the Response to AG Data Request No. 2 incorporates by reference the information provided in response to the Staff’s request. The bid information produced in the Response to Staff Data Request No. 3 pertains to a different set of bids.

4. Disclosure of the bids and the factors underlying Kentucky American’s bid analysis and selection process would damage Kentucky American’s competitive position and business interests. This information reveals the business model Kentucky American uses - the procedure it follows and the factors and inputs it considers - in evaluating bids for construction projects. Moreover, if the Commission were to grant public access to the information provided in response to Staff Data Request Nos. 3 and 65 and AG Data Request No. 2, potential bidders could review the information and prospectively manipulate the bid solicitation process to the detriment of Kentucky American and its customers by tailoring bids to correspond to and comport with Kentucky American’s bidding criteria and process. The Commission has treated bid information as confidential in the past. *See* Letter from Executive Director Beth O’Donnell re

KU Petition for Confidential Protection, Case No. 2007-00524 (February 27, 2008). In order to maintain the confidentiality of the bid information, Kentucky American has redacted the portions of the attachment to Staff Data Request No. 3 that contain this information, and has designated the entire attachment to Staff Data Request No. 65 as confidential.

**Confidential Personal Information (KRS 61.878(1)(a))**

5. An attachment to Kentucky American's Response to Staff Data Request No. 2 includes employees' names, as well as personal identifying information for those employees, including their Social Security Numbers and dates of birth. In order to protect the personal and confidential information of the employees, Kentucky American has redacted the employees' Social Security Numbers and dates of birth. The Kentucky Attorney General has previously held that personal identifying information is exempt from disclosure under the Kentucky Open Records Act.<sup>1</sup>

6. Similarly, in response to Staff Data Request No. 44(a), Kentucky American is providing the name, title, length of employment, job duties, 2011 and 2012 pay rates, test-period regular time worked and overtime worked, percentage of payroll capitalized in 2011 and type of employee benefits for all employees that operate the Owenton Water Treatment Plant. In order to protect the personal and confidential information of the employees, Kentucky American has redacted the first column of information in the corresponding attachment, which is the employee name. This redaction is consistent with the Kentucky Attorney General opinion cited in the preceding paragraph.

7. If the Commission disagrees with these requests for confidential protection, however, it must hold an evidentiary hearing (a) to protect Kentucky American's due process rights and (b) to supply with the Commission with a complete record to enable it to reach a

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<sup>1</sup> See, e.g., 99-ORD-87 at 5.

decision with regard to this matter. Utility Regulatory Commission v. Kentucky Water Service Company, Inc., 642 S.W.2d 591, 592-94 (Ky. App. 1982).

8. The information for which Kentucky American is seeking confidential treatment is not known outside of Kentucky American, is not disseminated within Kentucky American except to those employees with a legitimate business need to know and act upon the information, and is generally recognized as confidential and proprietary information in the energy industry.

9. Kentucky American will disclose the confidential information, pursuant to a confidentiality agreement, to intervenors with a legitimate interest in this information and as required by the Commission. In accordance with the provisions of 807 KAR 5:001, Section 7 and the Commission's March 20, 2012 Order in this proceeding, Kentucky American herewith files with the Commission a paper copy of the material for which confidential protection is sought in which the confidential information is clearly identified by highlighting and a CD-ROM containing an electronic version of such material with highlighting.

**WHEREFORE**, Kentucky American Water Company respectfully requests that the Commission grant confidential protection for the information at issue, or in the alternative, schedule and evidentiary hearing on all factual issues while maintaining the confidentiality of the information pending the outcome of the hearing.

Dated: July 23, 2012

Respectfully submitted,

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By:



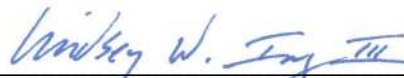
Lindsey W. Ingram III  
Monica H. Braun

Attorneys for Kentucky-American Water Company

### CERTIFICATE OF COMPLIANCE

In accordance with Ordering Paragraph Nos. 10 and 16 of the Commission's March 20, 2012 Order, this certifies that Kentucky-American Water Company's July 23, 2012 electronic filing is a true and accurate copy of the documents being filed in paper medium; that the electronic filing has been transmitted to the Commission on July 23, 2012; that there are currently no parties that the Commission has excused from participating by electronic means in this proceeding; and that an original and one copy of the filing in paper medium, as well as a paper copy and electronic copy on CD-ROM of the confidential materials, are being hand-delivered to the Commission on July 23, 2012.

By:



Attorney for Kentucky-American Water Company