

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

**IN THE MATTER OF:** )  
 )  
**THE APPLICATION OF KENTUCKY-AMERICAN ) CASE NO. 2012-00520**  
**WATER COMPANY FOR AN ADJUSTMENT OF )**  
**RATES ON AND AFTER JANUARY 27, 2013 )**

**PETITION FOR CONFIDENTIAL TREATMENT FOR CERTAIN RESPONSES TO  
THE COMMISSION STAFF’S SECOND REQUEST FOR INFORMATION, THE  
ATTORNEY GENERAL’S FIRST REQUEST FOR INFORMATION, AND  
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT’S FIRST REQUESTS  
FOR INFORMATION**

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) to grant confidential treatment to information that is responsive to Item Nos. 63(c), 67(a)-(b), 68(a)-(c), 77, 87, and 105(d) of the Commission Staff’s Second Request for Information; Items Nos. 21, 23(a), 75(d), 76(d), 77(d), 86, 103, 111, 117, 124, 144, and 168(c) of the Attorney General’s (“AG”) First Requests for Information; and Item No. 17 of the Lexington-Fayette Urban County Government’s First Requests for Information (“LFUCG”). In support of this Petition, KAWC states as follows:

1. On February 6, 2013, the Commission Staff served its Second Request for Information on KAWC. Item No. 63(c) requests information related to chemical contract prices. Item Nos. 67(a)-(b) and 68(a)-(c) asks for information related to the bidding process for the Business Transformation (“BT”) project. Item No. 77 requests KAWC provide copies of documents pertaining to KAWC’s provision of billing services to non-KAWC or non-American Water entities. Item No. 87 asks for the basis for the OPEB forecasts. Item No. 105(d) asks for information related to KAWC’s capital projects.

2. On February 6, 2013, the Attorney General served its First Request for Information on KAWC.<sup>1</sup> Item No. 21 requests KAWC provide copies of all presentations made to rating agencies and/or investment firms. Item No. 23(a) asks KAWC to provide copies of presentations relating to KAWC's financial performance. Item No. 75(d) asks for actuarial reports for the supplemental executive retirement program. Item 76(d) asks for actuarial reports for the pension plan. Item 77(d) asks for actuarial reports related to post-employment benefits. Item No. 86 asks KAWC to provide the current contracts and invoices for its chemical purchases. Item No. 103 requests information related to KAWC's forecasted increase in chemical prices. Item No. 111 requests copies of KAWC's parent company's federal tax returns. Item No. 117 requests information regarding the allocation methods American Water utilizes for its state and federal tax liabilities. Item No. 124 requests information regarding KAWC's capitalization policy. Item No. 144 requests a copy of KAWC's bad debt write-off policy. Item No. 168(c) requests information regarding how the BT project was developed.

3. On February 5, 2013, LFUCG served its First Requests for Information on KAWC. Item No. 17 requests KAWC provide copies of, *inter alia*, its policies and procedures regarding fire hydrants.

4. 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.

5. The response to Staff Item No. 63(c) requires KAWC to produce copies of its contract prices, per chemical, from 2008-2012. While KAWC is producing the information

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<sup>1</sup> The Attorney General informally provided certain of the data requests to KAWC on February 1, 2013.

from 2008 through 2011 publically, the 2012 pricing should be held confidential because if the chemical prices are disclosed publically, other vendors will learn what KAWC is willing to pay for each chemical. By receiving this information, competitors can unfairly tailor their bids for chemical prices, which could prevent KAWC from receiving the best price for its customers. The Commission has previously found that contract prices merit confidential protection. See September 28, 2011 Letter to Mark R. Hutchinson from Jeff Derouen in Case No. 2011-00201.

6. The response to Staff Item Nos. 67(a)-(b) and 68(a)-(c) requires KAWC to provide bid documentation and related information with respect to the BT undertaking. Disclosure of the bids, as well as the review and selection process, would damage American Water's competitive position and business interests. This information reveals the business model American Water uses – the procedure it follows and the factors and inputs it considers - in evaluating bids. Moreover, if the Commission were to grant public access to the information, potential bidders could review the information and prospectively manipulate the bid solicitation process to the detriment of American Water, KAWC and its customers by tailoring bids to correspond to and comport with American Water's bidding criteria and process. The Commission has found that bid information merits confidential protection. See February 27, 2008 Letter to Allyson Sturgeon from Beth O'Connell in Case No. 2007-00524.

7. The response to Staff Item No. 77 requires KAWC to provide “all correspondence, electronic mail, analyses, notes, memoranda, studies, and related documents in which employees of Kentucky-American, American Water, or Service Company discuss the provision of billing services for non-Kentucky-American or American Water entities.” In response, KAWC is providing emails and correspondence that contain confidential customer-identifying information, such as customer names, account numbers, payment and accrued

balance history, as well as the names of customers that qualify for a discount on their sewer service based on socioeconomic factors. The Commission has found that personal customer information warrants confidential protection. See May 29, 2008 Letter from Stephanie Stumbo to Mary Keyer in Case No. 2005-00455.

8. Staff Item No. 87 requests that KAWC provide the basis for its OPEB forecast. The OPEB forecast is based upon guidance from American Water Accounting and contains material, forward-looking financial information through 2016. Due to its financial nature and American Water Works Company, Inc.'s publicly traded status, the response contains information that is governed by the Securities and Exchange Commission's Regulation FD (fair disclosure) in that it contains material non-public information, the disclosure of which could require broad, non-exclusionary disclosure to the general public. In KAWC's last rate case, the Commission granted confidential protection to information implicating Regulation FD disclosures. See June 16, 2010 Letter from Jeff Derouen to Lindsey W. Ingram, III in Case No. 2010-00036.

9. The response to Staff Item No. 105(d) requests information regarding KAWC's capital projects. Included in the attachment KAWC is providing is a bid tabulation sheet for one of the capital projects that contains information regarding each bidder that submitted bids on the project. This information should be granted confidential protection because if vendors have access to the bids submitted on the project, as well as how KAWC tabulates the bids, vendors could use the information to their commercial advantage. The Commission has consistently found that bid tabulations merit confidential protection. See February 27, 2008 Letter to Allyson Sturgeon from Beth O'Connell in Case No. 2007-00524.

10. The response to AG Item No. 21 requires KAWC to provide “copies of all presentations made to rating agencies and/or investment firms by American Water Works Company (“AWWC”) and/or Kentucky American Water Company (“KAWC”) between January 1, 2012 and the present.” The presentations KAWC is producing are made on a confidential basis and provided in confidence to the credit rating agencies. Such information merits confidential protection because, having provided it to the credit rating agencies on a confidential basis, KAWC is obligated to protect the public disclosure of the information. In addition, the information contains commercially sensitive information and a candid review of KAWC’s business strategies. Public disclosure of this confidential information would discourage KAWC from providing such information to the credit rating agencies in the future. A less thorough review by the credit rating agencies could lead to less favorable credit ratings and higher capital costs for KAWC than their competitors. Moreover, there are agreements in place with certain of the rating agencies to maintain the confidentiality of the information. The Commission has held that presentations made to rating agencies merits confidential treatment in prior proceedings. See January 17, 2012 Letter from Jeff Derouen to Allyson Sturgeon in Case No. 2011-00161.

11. The response to AG Item No. 23(a) contains highly sensitive information regarding KAWC’s business development plan, specifically with regard to potential acquisitions of other water systems. If this information is disclosed publically, competitors would gain insight into KAWC’s business development practices and procedures, as well as valuation information that would provide competitors, as well as entities seeking to sell their assets to KAWC, with an unfair advantage in business transactions and negotiations with KAWC, to the detriment of KAWC and its customers. The Commission has found that business strategy

information relating to potential acquisitions merits confidential protection. See September 30, 2010 Letter from Jeff Derouen to Kendrick Riggs in Case No. 2010-00204.

12. The response to AG Item Nos. 75(d), 76(d) and 77(d) seek actuarial information relating to various employee benefits. This information is the product of extensive investment and would provide an unfair commercial advantage if disclosed publicly and competitors were able to obtain the information at no cost. Furthermore, due to its financial nature and American Water Works Company, Inc.'s publicly traded status, the responses contain information that is governed by the Securities and Exchange Commission's Regulation FD (fair disclosure) in that it contains material non-public information, the disclosure of which could require broad, non-exclusionary disclosure to the general public. The Commission found that this information merits confidential protection in KAWC's last rate case proceeding. See June 16, 2010 Letter from Jeff Derouen to Lindsey W. Ingram, III in Case No. 2010-00036.

13. AG Item No. 86 requires KAWC to provide copies of its actual contracts and invoices related to chemical purchases. If the terms of the contracts and invoices are disclosed publically, other vendors will learn what KAWC is willing to pay for its chemical purchases, as well as the terms and conditions of the contracts and purchases. By receiving this information, competitors can unfairly tailor their negotiations, bids, and estimates, which could prevent KAWC from receiving the best price and terms for its customers. The Commission has previously found that contract information, including prices and purchase volume, merits confidential protection. See September 28, 2011 Letter to Mark R. Hutchinson from Jeff Derouen in Case No. 2011-00201.

14. AG Item No. 103 requests the support and workpapers for KAWC's forecasted increase in chemical prices. In response, KAWC is providing forward-looking estimates

through 2017. Due to its financial nature and American Water Works Company, Inc.'s publicly traded status, the information is governed by the Securities and Exchange Commission's Regulation FD (fair disclosure) in that it contains material non-public information, the disclosure of which could require broad, non-exclusionary disclosure to the general public. In KAWC's last rate case, the Commission granted confidential protection to information implicating Regulation FD disclosures. See June 16, 2010 Letter from Jeff Derouen to Lindsey W. Ingram, III in Case No. 2010-00036.

15. AG Item No. 111 requests copies of KAWC's parent company's federal tax returns. Tax-related documents and information merit confidential protection. KRS 61.878(1)(k) exempts from public disclosure "all public records or information the disclosure of which is prohibited by federal law or regulation." Under 26 U.S.C. § 6103(a), state officials are prohibited from publicly disclosing any federal income tax return or its contents. Therefore, federal income tax returns and their content fall within the exemption provided by KRS 61.878(1)(k) and are exempt from disclosure. The Commission has previously found that tax returns merit confidential protection. See October 22, 2008 Letter from Stephanie Stumbo to Allyson Sturgeon in Case No. 2008-00252.

16. AG Item No. 117 requests information regarding how American Water allocates state and federal tax liabilities among its subsidiary companies. In response, KAWC is providing two attachments, both of which are confidential. The first attachment is a spreadsheet containing data regarding the federal tax allocations. The data on which the spreadsheet is based is derived from information contained in American Water's federal tax returns. Because KAWC is seeking confidential protection of the returns, which are being provided in response to AG Item No. 111, the spreadsheet containing the data equally merits confidential protection.

The second attachment KAWC is providing in response to AG Item No. 117 is American Water's Tax Sharing Policy, which is an accounting policy that is the product of extensive investment and would provide an unfair commercial advantage if disclosed publicly. The information is similar to the accounting policies and procedures for which the Commission granted confidential protection in KAWC's last rate case. See June 16, 2010 Letter from Jeff Derouen to Lindsey W. Ingram, III in Case No. 2010-00036.

17. AG Item No. 124 requests copies of KAWC's capitalization policy. One of the attachments being produced is information contained within an American Water accounting policy, which is the product of extensive investment and would provide an unfair commercial advantage if disclosed publicly. The information is similar to the accounting policies and procedures for which the Commission granted confidential protection in KAWC's last rate case. See June 16, 2010 Letter from Jeff Derouen to Lindsey W. Ingram, III in Case No. 2010-00036.

18. AG Item No. 144 requests a copy of KAWC's bad debt write-off policy. As with AG Item No. 124, the information is contained within an American Water accounting policy, which is the product of extensive investment and would provide an unfair commercial advantage if disclosed publicly. The information is similar to the accounting policies and procedures for which the Commission granted confidential protection in KAWC's last rate case. See June 16, 2010 Letter from Jeff Derouen to Lindsey W. Ingram, III in Case No. 2010-00036.

19. In response to AG Item No. 168(c), KAWC is providing a copy of the American Water Information Technology Infrastructure Comprehensive Planning Study Report. The Report provides inclusive information regarding American Water's business strategy and planning with respect to its information technology systems. The Report is the product of extensive work that American Water treats confidentially and proprietorially, as competitors



could benefit from the thorough investigation and work American Water performed in creating the report and the recommendations discussed therein. Additionally, the report contains business strategy information regarding American Water's implementation of the BT project. The Commission has found that business strategy information merits confidential protection. See September 30, 2010 Letter from Jeff Derouen to Kendrick Riggs in Case No. 2010-00204.

20. The response to LFUCG Item No. 17 includes the portion of the American Systems Operations Manual regarding fire hydrants. The Manual is the product of extensive investment and would provide an unfair commercial advantage if disclosed publicly. The Commission found that the Manual merits confidential protection in KAWC's last rate case proceeding. See June 16, 2010 Letter from Jeff Derouen to Lindsey W. Ingram, III in Case No. 2010-00036.

21. KAWC requests that the information be held confidentially in perpetuity. KAWC cannot envision a period of time in which it would be appropriate for KAWC's commercially sensitive and proprietary information or customer-identifying information to be disclosed in the public realm.

22. 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).

23. 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. In accordance with the

Commission's December 17, 2012 Order KAWC is filing (1) a copy of the material with those portions for which confidentiality is sought redacted on the Commission's web portal (in addition to the original and paper copy provided of the responses); (2) a paper copy of the materials with the confidential information clearly designated in yellow or by other reasonable means<sup>2</sup>; and a (3) CD-ROM containing an electronic version of such material with highlighting or other reasonable designation.

**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.

Dated: February 20, 2013

Respectfully submitted,

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<sup>2</sup> Because the confidential responses to PSC Item Nos. 67(a)-(b) and 68(a)-(c) are voluminous and maintained in electronic form, KAWC has contemporaneously filed a Motion to Deviate from the requirement of filing a paper copy of those responses. Those responses are being provided on a USB flash drive, and KAWC seeks confidential treatment of every file on the flash drive.

**CERTIFICATE**

In accordance with Ordering Paragraph No. 10 of the Commission's December 17, 2012 Order, this is to certify that Kentucky-American Water Company's February 20, 2013 electronic filing 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 February 20, 2013; that an original and one copy of the filing will be delivered to the Commission on February 20, 2013; and that no party has been excused from participation by electronic means.

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By           *Marcia H. Braun*          

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