

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:)
)
THE APPLICATION OF KENTUCKY-AMERICAN)
WATER COMPANY FOR A CERTIFICATE OF) **CASE NO. 2014-00258**
CONVENIENCE AND NECESSITY AUTHORIZING)
THE CONSTRUCTION OF RICHMOND ROAD)
STATION FILTER BUILDING IMPROVEMENTS)

PETITION OF KENTUCKY-AMERICAN WATER
COMPANY FOR CONFIDENTIAL PROTECTION
OF RESPONSES TO INFORMATION REQUEST

Kentucky-American Water Company (“KAW”) hereby petitions the Kentucky Public Service Commission (“Commission”) pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c) to grant confidential protection for the items described herein, which KAW is providing in response to Commission Staff’s First Set of Information Requests. In support of this Petition, KAW states as follows:

1. The Kentucky Open Records Act exempts from disclosure certain confidential or proprietary 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.

2. On September 3, 2014, Commission Staff issued its First Set of Information Requests to KAW. The responses to Nos. 12, 13, 15, and 17 contain confidential information which, if disclosed publicly, could work to KAW’s competitive disadvantage. Item No. 12 seeks copies of the proposals received for the design of the Richmond Road Station Filter Building. Although one of the proposals has been chosen, the design work is not yet complete. To the

extent that the entity to whom the design contract was awarded learns the margin by which its proposal differed from the proposals that were not chosen, that contractor could assume it has that same margin to use in the remainder of the design work and/or change orders before its proposal becomes less attractive than a proposal that was not chosen. To avoid that situation and the competitive disadvantage that could flow from it, the proposals and related cost information should be kept confidential.

3. Item No. 13 also seeks information related to KAW's selection of a building design contractor. In its response, KAW has provided many documents, including the contract executed by KAW and the selected building design contractor. That contract provides some specific cost information which, if made available to the bidders who were not awarded the design contract, would allow "losing" bidders to know how much their bids fell short. To the extent such information is known, it could chill the competitive bidding process in the future which would work to KAW's competitive disadvantage.

4. Item No. 15 seeks information related to the request for proposal process KAW used in selecting a general contractor for the construction of the filter building at issue in this case. In its response, KAW has provided specific cost information which, if made available to the bidders who were not awarded the construction contract, would allow "losing" bidders to know how much their bids fell short. If that information is disclosed, it could chill the competitive bidding process in the future. Likewise, as set forth in Paragraph 5 below, the construction cost estimates have not been reduced to subcontracts yet, and KAW and/or its general contractor will be going to the marketplace in the near future to negotiate and execute subcontracts. If that cost information becomes public, that subcontract negotiation process will be compromised to KAW's competitive disadvantage.

5. Item No. 17 seeks information related to the itemized construction cost estimates KAW and its general construction contractor have developed. However, those construction cost estimates have not been reduced to subcontracts yet, and KAW and/or its general contractor, will be going to the marketplace in the near future to negotiate and execute subcontracts for construction services for electrical, masonry, metal work, etc. To the extent subcontractors in the marketplace become aware of the current estimates for each type of work, it could work to KAW's competitive disadvantage by chilling the negotiation process.

6. If the Commission disagrees with this request for confidential protection, 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 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).

7. The information for which KAW is seeking confidential treatment is not known outside of KAW and its consultants and contractors, is not disseminated within KAW 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 water industry. The relevant pages containing confidential information are being provided in the accompanying sealed envelope.

8. KAW requests that the information described above be kept confidential for a minimum of three years from the date of filing of this petition.


WHEREFORE, KAW respectfully requests that the Commission grant confidential protection 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.

Date: September 17, 2014

Respectfully submitted,

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CERTIFICATE

This is to certify that Kentucky American Water's September 17, 2014 electronic filing is a true and accurate copy of the documents being filed in paper medium except that the confidential documents will not be electronically filed; that the electronic filing was transmitted to the Commission on September 17, 2014; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that a paper copy of the filing will be hand-delivered to the Commission no later than two business days after the electronic filing.



Counsel for Kentucky American Water