

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:)
)
APPLICATION OF KENTUCKY-AMERICAN)
WATER COMPANY FOR AN ADJUSTMENT) **CASE NO. 2014-00390**
OF ITS WASTEWATER RATES PURSUANT)
TO 807 KAR 5:076)

PETITION FOR CONFIDENTIAL TREATMENT

Kentucky-American Water Company (“Kentucky American Water”) petitions the Kentucky Public Service Commission (“Commission”) pursuant to 807 KAR 5:001, Section 13 and KRS 61.878 to grant confidential protection for the federal and state income tax returns it is providing with its application in this proceeding. In support of this Petition, Kentucky American Water states as follows:

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, the disclosure of which would place the party seeking confidentiality at an unfair commercial advantage.

2. As part of its application, Kentucky American Water is required to submit its 2013 federal and state income tax returns. These returns contain proprietary information that is subject to protection from disclosure pursuant to Kentucky law, KRS 61.878(1)(c). The Commission has recently afforded confidential protection to federal and state income tax returns.¹

¹ Case No. 2013-00148, *In the Matter of: Application of Atmos Energy Corporation for an Adjustment of Rates and Tariff Modifications* (Ky. PSC Sept. 4, 2013).

3. KRS 61.878(1)(k) exempts from public disclosure “[a]ll public records or information the disclosure of which is prohibited by federal law or regulation.” Federal law codified in 26 U.S.C. § 6103(a)(2), (b)(2)(A) prohibits state officials from publicly disclosing any federal income tax return or its contents, therefore making the requested federal income tax return exempt.

Returns and return information shall be confidential, and except as authorized by this title ... no officer or employee of any State . . . shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section

The term "return information" means a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments...

4. The state income tax returns are likewise confidential and protected from disclosure pursuant to KRS 61.878(1)(l), which exempts “...public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly.” KRS 131.190(1)(a) states that “[n]o present or former commissioner or employee of the Department of Revenue...or any other person, shall intentionally and without authorization inspect or divulge any information acquired by him of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed...”

5. If the Commission disagrees with this request for confidential protection, however, it must hold an evidentiary hearing (a) to protect the Companies’ due process rights and (b) to supply 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).

6. The information for which Kentucky American Water is seeking confidential treatment pursuant to KRS 61.878(1)(c),(k),(l) is not known outside of the utility, is not disseminated within Kentucky American Water 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 within the utility industry.

7. Kentucky American Water will disclose the confidential information (pursuant to a confidentiality agreement) to intervenors and others with a legitimate interest in this information and as required by the Commission.

8. In compliance with 807 KAR 5:001, Sections 8(3) and 13(2)(e), Kentucky American Water is filing with the Commission one paper copy that identifies the information for which confidential protection is sought and one electronic copy with the same information obscured.

9. The Companies request that the information be kept confidential for an indefinite period of time because the requisite statutes do not allow for disclosure at any time because of the highly confidential and proprietary nature of the information at issue.

WHEREFORE, the Companies respectfully request that the Commission grant confidential protection for the information described herein.

Date: November 14, 2014

Respectfully submitted,

STOLL KEENON OGDEN PLLC
300 West Vine Street, Suite 2100
Lexington, KY 40507-1801
Telephone: (859) 231-3000
Fax: (859) 253-1093
Email: L.Ingram@skofirm.com
Monica.Braun@skofirm.com

By: *Monica H. Braun*
Lindsey W. Ingram III
Monica H. Braun

CERTIFICATE

This is to certify that Kentucky American Water's November 14, 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 November 14, 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.

Monica H. Braun
Counsel for Kentucky American Water