

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

**IN THE MATTER OF:** )  
 )  
**APPLICATION OF KENTUCKY-AMERICAN )**  
**WATER COMPANY FOR AN ADJUSTMENT )** **CASE NO. 2015-00418**  
**OF RATES** )  
 )

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

Kentucky-American Water Company (“KAWC”) moves the Kentucky Public Service Commission (“Commission”) pursuant to 807 KAR 5:001, Section 13, and KRS 61.878 to grant confidential treatment to the information described herein that is being provided in response to the Commission Staff’s Second Request for Information and the Attorney General’s (“AG”) and Lexington-Fayette Urban County Government’s (“LFUCG”) Initial Requests for Information. In support of this Petition, KAWC states as follows:

On March 3, 2016, LFUCG issued its Initial Request for Information to KAWC. On March 7, 2016, the Commission Staff issued its Second Request for Information to KAWC, and the AG submitted its Initial Request for Information. The responses to certain of these requests contain confidential information.

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.

AG Item No. 12 requests the “policies and procedures” that KAWC relies on when making the determination to provide a wage or salary increase. AG Item No. 118 seeks a copy of KAWC’s tax sharing agreement. LFUCG Item No. 26 requests copies of KAWC’s policies and procedures regarding testing, maintaining, and replacing fire hydrants. These policies and procedures are the product of extensive time and substantial investment by KAWC and American Water Works Company. Allowing other utilities to obtain the proprietary work product of these efforts for free would place KAWC at a competitive disadvantage. The Commission has previously found that policies and procedures merit confidential protection. See, e.g., In the Matter of: An Examination of the Application of the Fuel Adjustment Clause of Duke Energy Kentucky, Inc. from November 1, 2010 through April 30, 2011 (Case No. 2011-00249) (Derouen Letter from Dec. 6, 2011).

AG Item No. 16 requests all presentations made to rating agencies from January 1, 2015 to present. These presentations 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. The Commission has previously found that presentations made to rating agencies should be exempt from public disclosure. See, e.g., In the Matter of: Application of Kentucky Utilities

Company for an Adjustment of Base Rates (Case No. 2009-00548) (Derouen Letter from Feb. 29, 2012).

AG Item No. 99 requests a copy of KAWC's contracts with consultants and third parties for rate case services. The third parties that enter into such contracts with KAWC may not enter into as favorable pricing terms if the contracts are disclosed publicly. Such effect would negatively harm KAWC's competitive position and consequently its ratepayers if prices rose. The Commission has previously granted confidential protection to contracts on these grounds. See, e.g., In the Matter of: Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for Review, Modification, and Continuation of Existing, and Addition of New, Demand-Side Management and Energy Efficiency Programs (Case No. 2011-00134) (Derouen Letter from Aug. 31, 2011). Relatedly, AG Item Nos. 33 and 34 request copies of reports issued by AUS Consultants. AUS Consultants has provided this information as a courtesy, and as set forth in the reports, considers the information contained therein confidential and proprietary. As such, public disclosure would place AUS Consultants at a competitive disadvantage and could cause the company to no longer provide this relevant information as a courtesy to KAWC.

The Kentucky Open Records Act also exempts from disclosure "information the disclosure of which is prohibited by law or regulation." KRS 61.878(1)(k). Item No. 50 from the Commission Staff requests the work papers and supporting documents that show how OPEB forecasts were calculated. Item No. 20 from the AG requests information regarding the expected return on pension assets. The responses contain actuarial information relating to employee benefits that is governed by Securities and Exchange Commission "Regulation FD" (fair disclosure) that is material non-public information, the disclosure of which could require broad,

non-exclusionary disclosure to the general public. The Commission has previously found that this information merits confidential protection. See, e.g., In the Matter of: The Application of Kentucky-American Water Company for an Adjustment of Rates on and After March 28, 2010 (Case No. 2010-00036) (Derouen Letter from Dec. 21, 2010).

Relatedly, AG Item No. 119 requests the taxable income or loss for each member of the consolidated group for each of the past ten years. AG Item No. 120 requests the income taxes paid by the consolidated group for each of the past ten years. AG Item No. 122 requests the amount paid to each loss company by the parent in each of the past ten years in compensation for tax losses. AG Item No. 123 requests the tax loss carry forward currently available to the consolidated group. AG Item No. 124 seeks the amount of income taxes that the consolidated group expects to pay in 2015 through 2017. AG Item No. 128 requests the amount of Alternative Minimum Tax paid over the past years and projected amounts through the forecast period. The responses to these requests involve information from KAWC's income tax filings. Under 26 U.S.C.A. § 6103(a), state officials are prohibited from publicly disclosing any federal income tax return or its contents. Therefore, these responses fall within the exemption provided by KRS 61.878(1)(k) and are exempt from disclosure. See In the Matter of Application for Adjustment of Rates of Kentucky Power Company (Case No. 91-066) (Ky. PSC July 23, 1991).

The Kentucky Open Records Act also exempts from disclosure "information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." KRS 61.878(a). Commission Staff Item No. 29(a)-(d) requests information regarding employee eligibility in KAWC's incentive compensation programs, as well as the forecasted and actual amounts received. Similarly, AG Item No. 9(a)-(d) requests, by KAWC employee position, information related to salary, overtime pay, incentive compensation,

and pay increases. AG Item No. 52 requests information regarding officer compensation paid in the past three years. AG Item No. 64(c) asks for the individuals eligible to receive non-qualified retirement benefits. All of the responses to these questions reveal information regarding employees' wage and compensation information, which is of a personal nature. The Kentucky Court of Appeals has stated, "information such as ... wage rate ... [is] generally accepted by society as [a] detail [] in which an individual has at least some expectation of privacy." Zink v. Department of Workers' Claims, Labor Cabinet, 902 S.W.2d 825, 828 (Ky. Ct. App. 1994). The Commission should therefore give confidential treatment to the information included in these responses because disclosing the contents thereof would invade the privacy rights of the individuals named.

KAWC requests that the information be held confidentially in perpetuity. KAWC cannot envision a period of time in which it would be appropriate for employees' private compensation information or KAWC's proprietary commercial and tax information to be disclosed in the public realm.

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).

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. KAWC is filing one paper copy under seal that identifies the information for which confidential protection is sought and one

electronic copy with the same information obscured. For those responses for which confidential treatment is sought for the entirety of a document, written notification that the entire document is confidential has been noted on the documents in lieu of highlighting. Otherwise, the confidential portions have been designated by highlighting.

**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.

Date: March 24, 2016

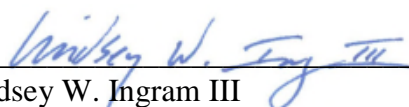
Respectfully submitted,

Lindsey W. Ingram III  
[L.Ingram@skofirm.com](mailto:L.Ingram@skofirm.com)

Monica H. Braun  
[Monica.braun@skofirm.com](mailto:Monica.braun@skofirm.com)

STOLL KEENON OGDEN PLLC  
300 West Vine Street, Suite 2100  
Lexington, Kentucky 40507-1801  
Telephone: (859) 231-3000  
Fax: (859) 259-3503

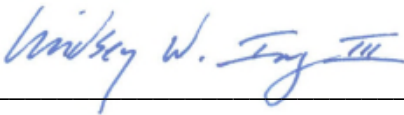
By:

  
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Lindsey W. Ingram III  
Monica H. Braun

**CERTIFICATE**

This certifies that Kentucky-American Water Company's electronic filing is a true and accurate copy of the documents to be filed in paper medium with the exception of documents for which confidential treatment is sought; that the electronic filing has been transmitted to the Commission on March 24, 2016; that a paper copy of the filing will be delivered to the Commission within two business days of the electronic filing; and that no party has been excused from participation by electronic means.

STOLL KEENON OGDEN PLLC

By: 

Attorneys for Kentucky-American Water Company