

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

**ATTORNEY GENERAL'S RESPONSE TO KENTUCKY-AMERICAN WATER
COMPANY'S OBJECTION TO INITIAL REQUEST FOR INFORMATION**

The Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, submits the following Response to Kentucky-American Water's ("Kentucky American Water" or "Company") Objection to the Attorney General's Initial Request for Information Item No. 22. ("Item No. 22" or "discovery request")

In Item No. 22, the Attorney General requested the authorized and earned return on common equity for Kentucky American Water and its parent company's, American Water Works Company Inc. ("American Water"), other operating utility subsidiaries, along with the associated work papers and source documents for the past five years. Kentucky American Water filed an objection to this request and asserted that the Company would comply with filing the authorized and earned return on common equity for Kentucky American Water as well as the authorized return on common equity for the other operating utility subsidiaries of American Water.¹ However, the Company objects to filing the earned returns on common equity for each of the operating utility subsidiaries of American Water.² Kentucky American Water stated, "the

¹ *In the Matter of: Application of Kentucky-American Water Co. for an Adjustment of Rates*, Objection to AG Initial Request for Information 22, Case No. 2015-00418.

² *Id.*

earned returns of the other operating utility subsidiaries has no relevance as to what authorized return should be ordered in this case.”³ The Attorney General vehemently disagrees with this statement, and requests the Commission to order Kentucky American Water to file a proper response to his discovery request.

Even though the Commission is not bound by the technical rules of legal evidence,⁴ when adjudicating discovery disputes it often considers Kentucky Rule of Civil Procedure (“CR”), 26.02(1).⁵ CR 26.02(1) authorizes “... discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party... [i]t is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.”⁶ Based upon this language, it is clear that CR 26.02(1) grants an expansive scope for the discovery process. In fact, the Commission has stated that in accordance to CR 26.02(1) the “scope of discovery in Kentucky is quite broad”,⁷ and if a party objects to a discovery request the burden is upon the objecting party to demonstrate that the request is improper.⁸

The Attorney General’s discovery request is unequivocally relevant to the pending case for the reasons discussed herein. Kentucky American Water asserted in its Application that the Company is entitled to yet another large rate increase to be placed on the backs of its ratepayers, in part, because it is not earning a just and reasonable rate of return on its investment.⁹ In order

³ *Id.*

⁴ KRS 278.310. *In the Matter of: Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of Its 2011 Compliance Plan for Recovery by Environmental Surcharge*, 2011-00161, 2011 WL 3891702, at 3 (Ky. PSC. Sept. 1, 2011).

⁵ *Id.*

⁶ CR 26.02.

⁷ *In the Matter of: Kentucky-American Water Co.*, 2007-00134, 2007 WL 4105210, at 3 (Ky. PSC. Nov. 15, 2007).

⁸ *Id.*

⁹ *In the Matter of: Application of Kentucky-American Water Co. for an Adjustment of Rates*, Case No. 2015-00418.

to determine the truth and veracity of this assertion, the Attorney General should be permitted to review the earned return on common equity for American Water's other operating utility subsidiaries. It is imperative for the Attorney General to evaluate the authorized versus earned return on common equity for the other subsidiaries in order to assess whether the operating subsidiaries, as a group or individually, earned returns on common equity above or below the authorized returns. If most of the operating subsidiaries of American Water earn returns on common equity below their authorized returns, it may indicate a management issue with the parent company, or it may be attributable to some other factor, such as excessive allocation of corporate expenses. Moreover, if one of the American Water subsidiaries has a lower return on common equity than Kentucky American Water, yet is not asking for a rate increase from its customers, then this would cast doubt upon the assertion that Kentucky American Water is not earning a just and reasonable rate of return.

Furthermore, Kentucky American Water's expert witness on cost of equity and rate of return, Dr. Vander Weide, placed American Water as a member of his proxy group of water utility companies.¹⁰ The earned return on common equity for American Water, that is a matter of public record, is a combination of the earned return on common equity for Kentucky American Water and American Water's other operating utility subsidiaries. Due to the fact that Dr. Vander Weide used American Water as a member of his proxy group, the earned return on common equity is necessary from all of its subsidiaries in order to assess the relative contributions to the overall return on equity. Based upon the foregoing, the Attorney General's discovery request comports with the scope of CR 26.02(1) as well as prior Commission precedent, and Kentucky

¹⁰ *In the Matter of: Application of Kentucky-American Water Co. for an Adjustment of Rates*, Case No. 2015-00418.

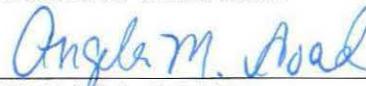
American Water should be ordered to provide a proper response to the Attorney General's discovery request Item 22.

Moreover, even though the Attorney General has demonstrated that his discovery request is relevant to the pending case, the burden is actually upon Kentucky American Water to prove that the request is improper since the Company filed the objection to the request.¹¹ The Attorney General would argue that Kentucky American Water has not met this burden of proof by simply making a bare bones statement that "the earned returns of the other operating utility subsidiaries has no relevance as to what authorized return should be ordered in this case."¹²

WHEREFORE, the Attorney General respectfully requests the Commission to order Kentucky American Water to provide a substantive response to his Initial Request for Information Item 22.

Respectfully submitted,

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¹¹ *In the Matter of: Kentucky-American Water Co.*, 2007-00134, 2007 WL 4105210, at 3 (Ky. PSC. Nov. 15, 2007).

¹² *In the Matter of: Application of Kentucky-American Water Co. for an Adjustment of Rates*, Objection to AG Initial Request for Information 22, Case No. 2015-00418.