

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

**IN THE MATTER OF:**

|                                     |   |                            |
|-------------------------------------|---|----------------------------|
| <b>ELECTRONIC APPLICATION OF</b>    | ) |                            |
| <b>KENTUCKY-AMERICAN WATER</b>      | ) | <b>CASE NO. 2018-00358</b> |
| <b>COMPANY FOR AN ADJUSTMENT OF</b> | ) |                            |
| <b>RATES</b>                        | ) |                            |

**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 items described herein, which Kentucky American Water seeks to provide in response to Items 24, 25, and 42 of the Attorney General’s (“AG”) Supplemental Data Requests, Item 10 of Lexington-Fayette Urban County Government’s (“LFUCG”) Second Request for Information, and Item 53 of the Commission Staff’s Third Request for Information. Kentucky American Water is also seeking protection for the inadvertent disclosure of confidential information provided in the attachment to Item 16 of the Commission Staff’s Second Request for Information. In support of this Petition, Kentucky American Water states as follows:

**Confidential or Proprietary Commercial Information (KRS 61.878(1)(c)(1))**

1. The Kentucky Open Records Act exempts from disclosure certain commercial information.<sup>1</sup> 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.

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<sup>1</sup> KRS 61.878(1)(c).

2. AG Item 24 requests additional information about the price changes for chemical costs that Kentucky American Water provided in response to Commission Staff Item 2-23.<sup>2</sup> The attachments provided in response to AG Item 24 contain confidential chemical pricing information, the disclosure of which would inure Kentucky American Water's ability to negotiate future chemical pricing contracts at advantageous prices and would unfairly advantage Kentucky American Water's competitors. The attachments to AG Item 24 contain confidential supplier names, material descriptions, price quotes, and unit prices. If the supplier names and prices are disclosed, Kentucky American Water's competitors would be alerted to low-price suppliers and vendors may be less likely to work with Kentucky American Water. Additionally, publicly disclosing the material descriptions and unit pricing would hinder Kentucky American Water's ability to receive the best proposals and procure the best contract terms in future negotiations for chemicals by providing potential vendors the price ceiling on what Kentucky American Water would be willing to pay for certain materials, which would reduce, if not eliminate, vendors' incentive to provide their most competitive bids. Diminishing Kentucky American Water's ability to receive the best prices would harm both Kentucky American Water and its customers through increased costs of service. Thus, the Commission should grant confidential protection to the confidential portions of the attachments provided in response to AG Item 24.

3. AG Item 25 asks for further information regarding copper sulfate treatments and related chemical prices for same. As with AG Item 24, portions of the response and attachments thereto contain confidential supplier names, material descriptions, price quotes, and unit prices. Kentucky American Water requests confidential treatment for the same reasons set forth in the preceding paragraph.

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<sup>2</sup> Kentucky American Water requested confidential protection for Commission Staff Item 2-23 on January 25, 2019.

4. AG Item 42 requests the breakdown of Kentucky American Water's target variable compensation. In response, Kentucky American Water is providing information regarding its proprietary compensation plan information. This information is proprietary because it reflects Kentucky American Water's compensation and benefits strategy. Kentucky American Water has spent significant time and resources developing its compensation plans and allowing competitors to have access to this information would provide an advantage to those competitors. Because of the proprietary nature of the information at issue, Kentucky American Water requests confidential protection for a portion of the response to AG Item 42.

5. LFUCG Item 10 requests Kentucky American Water's policies and procedures regarding when and how Kentucky American Water will capitalize employee time and salary expense. The response to LFUCG Item 10 includes an attachment containing the relevant policies and procedures that are the product of extensive time and money invested by Kentucky American Water and its parent company. This attachment contains confidential and proprietary information, the disclosure of which would unfairly advantage Kentucky American Water's competitors. If those competitors have free access to the same information that Kentucky American Water expended substantial resources to develop, they will derive an unfair commercial advantage. Because of the proprietary nature of the information at issue, Kentucky American Water requests confidential protection for the entirety of the attachment provided in response to LFUCG Item 10.

6. Commission Staff Item 53 requests information about Kentucky American Water's meter costs. In response, Kentucky American Water is providing a response and attachments that contain the price Kentucky American Water pays for its meters and appurtenances. These prices are a product of negotiation and publicly disclosing them would

hinder Kentucky American Water's ability to receive the best proposals and procure the best price in future negotiations by providing potential vendors the price ceiling on what Kentucky American Water would be willing to pay for meters, which would reduce, if not eliminate, vendors' incentive to provide their most competitive bids. Diminishing Kentucky American Water's ability to receive the best prices would harm both Kentucky American Water and its customers through increased costs of service. Accordingly, the Commission should grant confidential protection to portions of the response and attachments provided in response to Commission Staff Item 53.

7. In preparing the response to Item 53, Kentucky American Water realized that it inadvertently disclosed the same meter price information in the attachment to Item 16 of the Commission Staff's Second Request for Information. Kentucky American Water respectfully requests the Commission to permit it to correct this oversight by replacing the publicly filed attachment to Item 16 with a redacted version that obscures the confidential information. Kentucky American Water further requests that the Commission remove the public attachment from the electronic case record until the Commission rules on this request.

**The Confidential Information Subject to this Petition**

8. The information for which Kentucky American Water is seeking confidential treatment pursuant to KRS 61.878 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.

9. 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.

10. 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.<sup>3</sup>

11. In compliance with 807 KAR 5:001, Section 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. Pursuant to 807 KAR 5:001, Section 13(2)(a)(3)(b), confidential treatment is sought for the entirety of certain documents produced in response to AG Items 24 and 25, LFUCG Item 10, and PSC Item 53. For these documents, written notification that the entire document is confidential has been submitted with the document in lieu of highlighting in accordance with 807 KAR 5:001, Section 13(2)(b).

12. Due to the proprietary nature of the information at issue, Kentucky American Water requests that the information remain confidential indefinitely.

WHEREFORE, the Kentucky-American Water Company respectfully requests that the Commission grant confidential protection for the information described herein.

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<sup>3</sup> Utility Regulatory Commission v. Kentucky Water Service Company, Inc., 642 S.W.2d 591, 592-94 (Ky. App. 1982).


Date: March 1, 2019

Respectfully submitted,

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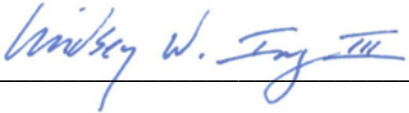
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By:   
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**CERTIFICATE**

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 1, 2019; 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