

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

THE APPLICATION OF KENTUCKY-)	
AMERICAN WATER COMPANY FOR AN)	CASE NO. 2018-00358
ADJUSTMENT OF RATES)	

PETITION FOR CONFIDENTIAL TREATMENT
OF RESPONSES TO ITEMS 1, 4, 5, 29, 33(a),(c), and 36 OF THE COMMISSION
STAFF’S FIRST SET OF INFORMATION REQUESTS

Kentucky-American Water Company (“KAWC”) moves the Kentucky Public Service Commission (“Commission”) pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c) to grant confidential treatment to information relating to the accounting and employment affairs of KAWC and its parent company. In support of this Petition, KAWC states as follows:

On November 8, 2018, the Commission Staff served its First Set of Information Requests on KAWC. Item 1 asks KAWC to “[p]rovide a copy of the workpapers and calculations that Kentucky-American used to develop its forecasted test-period financial information in Excel spreadsheet format.” Item 4 asks for information concerning KAWC’s “internal accounting manuals, directives, and policies and procedures.” Item 5 requests KAWC to provide “budget instructions, assumptions, directives, manuals, policies and procedures, timelines, and descriptions of budget procedures.” Item 29 asks for “all wage, compensation, and employee benefits studies, analyses, and surveys that Kentucky-American has conducted, commissioned, or used.” Item 33(a) asks KAWC to “describe the incentive pay plans and explain why such a plan is necessary and reasonable.” Item 33(c) asks KAWC to state “the level of incentive pay awarded to all individuals participating in the program for the previous five calendar years compared to the level of incentive pay available to each participant in the forecasted period.”

Item 36 requests a “copy of the most recent actuarial study that was performed to calculate Kentucky-American’s annual accrual of pension costs and OPEB costs for accounting purposes.”

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.

The response to Item 1 includes the workpapers that were used to develop KAWC’s filing schedules. Certain of these workpapers contain employees’ job titles, identification numbers, and compensation information. Similarly, the response to Item 33(c) lists not only the employees (by title) that are eligible to receive incentive compensation, but the amount each employee received for the last five years. 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 response to Item 1 and Item 33(c), because disclosing the contents thereof would invade the privacy rights of the individuals named. KAWC is not requesting confidential treatment for executive job titles or compensation information.

The response to Item 1 also includes forecast chemical expense that shows the expected prices, by supplier. KAWC is seeking confidential treatment for the supplier and price information so that those suppliers (and other potential suppliers) are not privy to the amounts KAWC expects to pay, which, if disclosed, will impede KAWC’s ability to negotiate for more

favorable terms. This would harm both KAWC and its ratepayers, and provide an unfair competitive advantage to those suppliers.

The response to Item 4 contains accounting policies and procedures that are the product of extensive time and money invested by KAWC's parent company, American Water Works Company, Inc. ("AWWC"). The responses to Item 5 (budgeting practices and assumptions), Item 29 (wage, compensation, and employee benefits studies), Item 33(a) (plan brochures) and Item 36 (actuarial reports) consist of information that is also the product of extensive time and money invested by AWWC. Furthermore, due to its financial nature and American Water Works Company, Inc.'s publicly traded status, the response to Item 36 contains information that is governed by the Securities and Exchange Commission's Regulation FD (fair disclosure) in that it contains material non-public information, the disclosure of which could require broad, nonexclusionary disclosure to the general public. These five responses consist of commercial information that is confidential and proprietary, the disclosure of which would unfairly advantage AWWC's and/or KAWC's competitors. If those competitors have free access to the same information that AWWC expended substantial resources to develop, they will derive an unfair commercial advantage. Access to this information would also provide competitors with information that could be used to recruit and hire KAWC and AWWC employees.

In Case No. 2015-00418, the Commission granted confidential protection to certain of the workpapers and calculations KAWC used to develop its forecasted test year, internal accounting manuals, employee benefits studies, actuarial reports, and certain job title and compensation information by Order dated August 26, 2016.

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 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. For the responses to Items 4, 5, 29, 33(a)-(c), and 36, in compliance with 807 KAR 5:001, 13(2)(e), 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.

Because the response to Item 1 is being provided in Excel format with links intact, KAWC is providing a "Confidential" flash drive that contains all of the workpapers, including those with confidential information. The Excel files that contain confidential information are within the Excel files named "Chemicals Exhibit Support 2019," "Chemicals Exhibit Support 2020," and "Labor and Labor Related Exhibit." KAWC is uploading the redacted Excel files on the Commission's e-filing system, and providing a "Public" flash drive to the Commission, as well.

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.

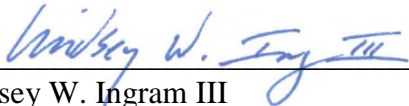
Date: December 12, 2018

Respectfully submitted,

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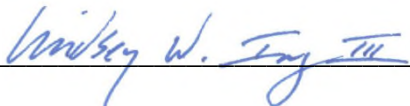
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CERTIFICATE

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 December 12, 2018; 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