

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

IN THE MATTER OF:

ELECTRONIC APPLICATION OF KENTUCKY-)	
AMERICAN WATER COMPANY FOR AN)	
ADJUSTMENT OF RATES, A CERTIFICATE)	
OF PUBLIC CONVENIENCE AND NECESSITY)	CASE NO. 2023-00191
FOR INSTALLATION OF ADVANCED METERING)	
INFRASTRUCTURE, APPROVAL OF CERTAIN)	
REGULATORY AND ACCOUNTING)	
TREATMENTS, AND TARIFF REVISIONS)	

**MOTION FOR RECONSIDERATION OF THE
ORDER OF OCTOBER 10, 2023**

Pursuant to KRS 278.400, Kentucky-American Water Company (“Kentucky American Water” or “Company”) respectfully moves the Kentucky Public Service Commission (“Commission”) to reconsider and to modify its October 10, 2023 Order¹ (“Order”) in this proceeding which denied, in part, the Company’s July 18, 2023 Petition for Confidential Protection. Specifically, Kentucky American Water respectfully requests reconsideration of the Commission’s determination that present chemical pricing information not be afforded confidential treatment.² In support of this Motion, Kentucky American Water states the following:

I. The Commission’s Order Fails to Explain Why It Finds that an Exception to the Kentucky Open Records Act Does Not Apply.

The Kentucky Open Records Act requires that all public records “be open for inspection

¹ The Commission issued two orders on October 10, 2023. The Company moves for reconsideration only on a portion of the Order denying protection for present chemical pricing included in the Company’s response to Commission Staff’s First Request for Information, Item No. 1. The Company is not requesting reconsideration of any portion of the Commission’s order denying confidential protection for certain items provided in the Company’s application and supporting materials.

² Should the Commission not grant this request for reconsideration, Kentucky American Water wishes to preserve its rights to object to the Commission’s determination that the requested material not be granted confidential treatment.

by any person, except as otherwise provided by KRS 61.870 to 61.884.”³ In its Order, the Commission recognizes that “KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure of records that are ‘generally recognized as confidential and proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.’”⁴ The Commission denied Kentucky American Water’s request for confidential protection of the present chemical pricing information contained in the Company’s response to Commission Staff’s First Request for Information, Item No. 1, holding that denying confidential treatment “will allow the transparency necessary for the utility ratepayers to know the information relied upon in the Commission’s final decision.”⁵

In its Order, the Commission does not opine on whether the disclosure of the present chemical pricing information would permit an unfair commercial advantage to competitors of the chemical suppliers, instead relying on its opinion that the denial of confidential treatment will allow for transparency. The Kentucky Open Records Act does not provide that the exception in KRS 61.878(1)(c)(1) only applies if the competitive harm outweighs the need for transparency. Competitive harm pursuant to KRS 61.878(1)(c)(1) either exists or it does not and Kentucky American Water respectfully requests reconsideration of this issue.

II. Disclosure of the Present Chemical Pricing Information Would Disadvantage American Water Customers Across the Country.

The Company’s present chemical pricing reflects negotiated rates that American Water (American Water is Kentucky American Water’s parent company) has reached with chemical suppliers. Kentucky American Water leverages its parent company’s national reach and volume purchases to secure lower prices for customers. If this information is disclosed, chemical suppliers

³ KRS 61.872(1).

⁴ Order at 2.

⁵ *Id.* at 3.

may be less willing to present low bids to American Water as it may damage their relationship with their other customers if those other customers learn about favorable pricing to American Water. If suppliers are not willing to present the lowest bids possible to American Water, all American Water customers, including customers of Kentucky American Water, will be negatively impacted by paying higher prices. Thus, the Commission's decision will have a direct and negative impact on customers.

The Company respectfully disagrees that disclosure of the present chemical pricing information will undermine the transparency necessary for the Company's customers to know the information relied upon in the Commission's decision. The Attorney General, who by statute represents and advocates for customer interests, has had access to the confidential information at all times throughout the case after signing a confidentiality agreement. The other intervenor in the case, Lexington-Fayette Urban County Government, has also had access to the confidential information after signing a confidentiality agreement. Both parties, along with Commission Staff and the Commission, have unfettered access to the confidential information. Furthermore, to balance the prevention of prejudicial commercial harm and the Commission's goal of transparently addressing the pricing, Kentucky American Water requested that the confidential pricing information remain confidential only for five years.

III. The Company's Chemical Supply Contracts Provide that Pricing Information Should be Kept Confidential.

As further evidence of the sensitive nature of the pricing information in the chemical supply contracts, the Company's chemical contracts provide that the pricing information is confidential. The contracts further provide that in the event a summons, regulatory order, court order, or other demand causes the disclosure of confidential information, the parties must notify one another and provide an opportunity for the party to lawfully object and defend any rights it may have to the


information. These provisions exist precisely because chemical suppliers want to protect favorable pricing provided to American Water.

IV. The Company's Suppliers Object to the Disclosure of the Chemical Pricing Information.

In addition to Kentucky American Water's objections to the Commission's determination that present chemical pricing information be denied confidential treatment, the Company's chemical suppliers strongly object to the disclosure of their commercially sensitive information. Because the pricing terms are confidential, negotiated terms, public disclosure of present chemical pricing permits an exceptionally unfair commercial advantage to competitors of the Company's chemical suppliers in contravention of KRS 61.878(1)(c)(1). Attached as Exhibit A is a letter from a chemical supplier discussing the supplier's concerns.

WHEREFORE, Kentucky-American Water Company respectfully requests that the Commission reconsider and modify the findings in its October 10, 2023 Order regarding the confidential treatment of present chemical pricing information provided and grant confidential protection of the present chemical pricing information.

Lindsey W. Ingram III
L.Ingram@skofirm.com
Monica H. Braun
Monica.braun@skofirm.com
Mary Ellen Wimberly
MaryEllen.Wimberly@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: 
Attorneys for Kentucky-American Water Company

CERTIFICATE

In accordance with the Commission's Order of July 22, 2021 in Case No. 2020-00085 (Electronic Emergency Docket Related to the Novel Coronavirus COVID-19), this is to certify that the electronic filing has been transmitted to the Commission on October 30, 2023; and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means.

STOLL KEENON OGDEN PLLC

BY: Mary Ellen Wimberly

Attorneys for Kentucky-American Water Company



Carus LLC
315 5th Street
Peru, IL 61354

October 27, 2023

Tom O'Drain
Director of National Categories & Corporate Procurement
American Water Supply Chain
1 Water Street
Camden, NJ 08102-1658

Dear Mr. O'Drain:

Carus LLC supplies high quality drinking water chemicals to treat potable and non-potable water across the US. We have a variety of customer market segments and distribution channels within our sales portfolio.

We are able to provide very competitive pricing to large key accounts (including American Water) with stipulations that prices remain confidential. Allowing pricing to become public may negatively impact other markets or channels to market thereby impacting how we approach these strategic accounts.

Carus sources products from larger raw material manufacturers who prefer not to participate in these markets directly due to the very public nature of these market. They prefer to work through strategic suppliers to again protect their position in other markets such as Food and Beverage or Industrial markets. We are able to secure favorable support positions from our suppliers for non-public markets (vs. public markets) for the same reason as outlined above. If our prices to our strategic accounts are made public, suppliers may be more reluctant to provide the favorable price positions to support this business and therefore negatively impact the cost to end use customers.

We value our business with American Water and hope you understand our position as it relates to confidentiality and our agreements.

Regards,

Craig P. Principi
Senior Sales Director
704-904-9570
Craig.Principi@carusllc.com
www.carusllc.com