

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

APPLICATION OF KENTUCKY-)	
AMERICAN WATER COMPANY FOR A)	CASE NO. 2023-00248
CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY)	
AUTHORIZING THE CONSTRUCTION OF)	
A WATER TRANSMISSION MAIN TO THE)	
CITY OF MILLERSBURG)	

PETITION FOR CONFIDENTIAL PROTECTION

Kentucky-American Water Company (“KAW” or “Company”) petitions the Kentucky Public Service Commission (“Commission”) pursuant to 807 KAR 5:001 Section 13 and KRS 61.878 to grant confidential protection for certain information the Company is providing in the attachment to its Ordering Paragraph 2 Report in this matter. In support of its Petition, KAW states the following:

Confidential Commercial Information — KRS 61.878(1)(c)(1)

1. The Kentucky Open Records Act exempts from disclosure certain records which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.¹ Public disclosure of the information identified herein would, in fact, prompt such a result for the reasons set forth below.

Bid Tabulations

2. Appendix B within the attachment to KAW’s Ordering Paragraph 2 Report contains bid tabulations derived from contractors’ responses to KAW’s four Requests for Proposals

¹ KRS 61.878(1)(c)(1).

(“RFPs”) to construct the water main to Millersburg, Kentucky, as approved by the Commission in its Order entered December 4, 2023.² These bid tabulations include detailed information from unsuccessful bidders, and a line-by-line breakdown of bid prices by unit.

3. Confidential protection of the bid tabulations is necessary pursuant to KRS 61.878(1)(c)(1) because public disclosure of the responses would disrupt the competitive bid process. Public disclosure would place the Company at a considerable disadvantage when negotiating future contracts. In addition, public disclosure would provide insight into the Company’s evaluation of bids to the detriment of KAW and its ratepayers. The public disclosure of this information would create precisely the type of competitive harm that the statute intends to prevent.

4. The Commission has previously granted confidential protection to RFP response information, such as bid tabulations, due to its sensitive nature.³

5. Accordingly, the Company requests that the portions of Appendix B to the attachment to the Ordering Paragraph 2 Report that contain commercially sensitive RFP response data remain confidential for a period of five years.

² See *Electronic Application of Kentucky-American Water Company for a Certificate of Public Convenience and Necessity Authorizing the Construction of a Water Transmission Main to the City of Millersburg*, Case No. 2023-00248 (Ky. PSC Dec. 4, 2023); see also *Kentucky-American Water’s Response to Commission Staff’s First Request for Information*, Item No. 10 (filed Sept. 1, 2023).

³ See, e.g., *Electronic Application of Kentucky-American Water Company for an Adjustment of Rates, A Certificate of Public Convenience and Necessity for Installation of Advanced Metering Infrastructure, Approval of Regulatory and Accounting Treatments, and Tariff Revisions*, Case No. 2023-00191, Order at 2-3 (Ky. PSC Oct. 16, 2023); Case No. 2020-00289, *Electronic Request of Atmos Energy Corp. for Modification & Extension of Its Gas Cost Adjustment Performance Based Ratemaking Mechanism*, Order at 3-4 (Ky. PSC Feb. 7, 2022); Case No. 2015-00264, *Application of Louisville Gas & Elec. Co. & Kentucky Utilities Co. Regarding Entrance into Refined Coal Agreements, for Proposed Acct. & Fuel Adjustment Clause Treatment, & for Declaratory Ruling*, Order at 1-2 (Ky. PSC Jan. 13, 2016); *An Examination of the Application of the Fuel Adjustment Clause of Big Rivers Electric Corporation from May 1, 2013 through October 31, 2013*, Case No. 2013-00449, Order (Ky. PSC June 20, 2014).

Material Cost Information

6. The attachment to the Ordering Paragraph 2 Report also contains confidential information pertaining to pipe material cost increases. Specifically, the attachment provides the actual cost that KAW currently purchases twelve-inch and sixteen-inch ductile iron pipe per linear foot. Public disclosure of this information would place KAW at an unfair commercial disadvantage because if pipe suppliers gained insight to the prices at which the Company currently purchases material, it would hinder the Company's ability to negotiate for the lowest reasonable material costs in the future. Decreased negotiating leverage would result in higher material costs, which would ultimately harm KAW's customers.

7. The Commission has previously granted confidential protection to similar supply pricing information.⁴

8. The Company requests that the portions of the attachment to the Ordering Paragraph 2 Report that contain sensitive pipe material pricing terms remain confidential for a period of five years.

Confidential Information Subject to this Petition

9. The information for which KAW is seeking confidential treatment is not known outside of KAW, its consultants with a need to know the information, and the Company's counsel, is not disseminated within KAW 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 in the utility.

⁴ See, e.g., Case No. 2023-00191, Order at 4 (Ky. PSC Nov. 17, 2023).

10. KAW will disclose the confidential information, pursuant to a confidentiality agreement, to intervenors with a legitimate interest in this information and as required by the Commission.

11. If the Commission disagrees with this request for confidential protection, it must hold an evidentiary hearing (a) to protect Kentucky American Water's 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.⁵

12. Pursuant to 807 KAR 5:001, Section 13(2)(b), for the attachment to the Ordering Paragraph 2 Report, which is not entirely confidential, Kentucky American Water is filing with the Commission one electronic copy that identifies with redactions the information for which confidential protection is sought. In accordance with the Commission's March 24, 2020 and July 22, 2021 Orders in Case No. 2020-00085, KAW will provide unredacted copies noting the confidential information with highlighting to the Commission. Access to the confidential information will be provided to intervenors upon request pursuant to a confidentiality agreement.

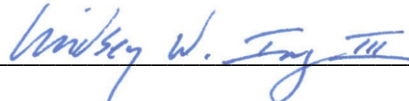
WHEREFORE, KAW respectfully requests that the Commission grant confidential protection for all of the information described herein.

⁵ *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 592-94 (Ky. App. 1982).

Date: June 14, 2024

Respectfully submitted,

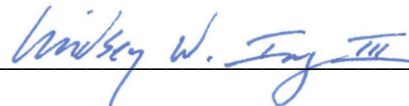
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By: 
Attorney for Kentucky-American Water Company

CERTIFICATE

This certifies that Kentucky-American Water Company's electronic filing is a true and accurate copy of the documents in paper medium; that the electronic filing has been transmitted to the Commission on June 14, 2024; and that no party has been excused from participation by electronic means.

STOLL KEENON OGDEN PLLC

By: 
Attorney for Kentucky-American Water Company