

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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**PUBLIC SERVICE
COMMISSION**

In the Matter of:

APPLICATION OF WATER SERVICE)
CORPORATION OF KENTUCKY FOR AN) Case No. 2010-00476
ADJUSTMENT OF RATES)

ATTORNEY GENERAL'S RESPONSE TO
APPLICANT'S 17 FEBRUARY 2011
PETITION FOR CONFIDENTIALITY
(ITEM 11, COMMISSION STAFF'S FIRST REQUEST FOR INFORMATION)

The Attorney General, by and through his Office of Rate Intervention, provides his Response to Applicant's 17 February 2011 Petition for Confidentiality. The Attorney General requests this Commission deny the Petition and, in support, notes the following.

At issue is information associated with Petitioner's response to item 11 of the Commission Staff's initial request for information. Petitioner seeks confidential treatment for information regarding the salary and benefits for the executive employees located in the Northbrook, Illinois office.

KRS 61.878(1)(a) authorizes confidentiality for information of a personal nature, such as the name of an individual. (See 24 April 2009 letter from Jeff Derouen, Executive Director to John N. Hughes; attached.) The Attorney General has no objection to redaction of this type of information. The positions and salaries of the applicant and its corporate parent, however, are not subject to confidential treatment.

The standard that Petitioner seeks to utilize has, as its foundation, the argument that any information not readily attainable or ascertainable by others constitutes a trade secret. Petitioner states: "Only WSCK and Utilities, Inc. are in a position to know its business operations and financial condition." Otherwise stated; Petitioner's logic is that any information that the utility need not disclose to a member of the public who places a demand upon the utility warrants confidential protection at the election of the utility. This is simply an incorrect standard. During the regulatory process, there is (as there has been for decades) a public disclosure of a variety of information not otherwise attainable or ascertainable by the general public.

The Commission affords confidential protection upon an appropriate demonstration of need. The policy of the Commonwealth is that KRS 61.870 is to be strictly construed. See KRS 61.871 (law strictly construed even though such examination may cause inconvenience or embarrassment to public officials or others). Company organizational staffing and salary information (separate from the redacted identify of any specific employee) is not generally recognized as propriety or confidential. In fact, staffing levels and the corresponding personnel costs are frequently the most prominent Operations and Maintenance (O&M) expense for review during a rate case involving water utilities.

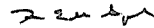
Additionally, a review of the exceptions authorized under KRS 61.878 discloses that the disclosure of information must correspond to a material, specific, present threat of use rather than a general, unspecified claim of potential

harm. For example, the test questions for a licensing examination or a real estate appraisal relating to the acquisition of property are items that correspond to a specific threat consequent to disclosure. Staffing levels and personnel expense amounts are not of the same character and are not recognized as having that character in the review of rate applications. It does not correspond to a specific threat of a competitive disadvantage. It is not confidential.

WHEREFORE, Applicant does not provide evidence and argument sufficient to meet its burden under 807 KAR 5:001 Section 7. Accordingly, the Petition should be denied.

Respectfully submitted,

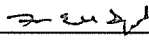
JACK CONWAY
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Notice Regarding Filing and Certificate of Service

Counsel certifies that an original and ten copies of this Response were served and filed by hand delivery to Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601. A copy was served on the Petitioner by United States Mail, first-class, postage-prepaid, to John N. Hughes, 124 West Todd Street, Frankfort, Kentucky 40601. The filing and service took place on 2nd day of March, 2011.



Assistant Attorney General



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David L. Armstrong
Chairman

James W. Gardner
Vice Chairman

John W. Clay
Commissioner

April 24, 2009

Hon. John N. Hughes
124 West Todd Street
Frankfort, Kentucky 40601

Re: Water Service Corporation of Kentucky
Petition for Confidential Treatment received March 5, 2009
PSC Reference: Case No. 2008-00563

Dear Mr. Hughes:

The Public Service Commission has received the Petition for Confidentiality you filed on March 5, 2009 on behalf of Water Service Corporation of Kentucky, to protect certain information filed with the Commission as confidential under Section 7 of 807 KAR 5:001 and KRS 61.870 et. seq. The information you seek to have treated as confidential is described as information contained in its schedules attached to its application, and specifically described as the Independent Auditor's Report, Exhibit 12; the Distribution of Expenses Report, Exhibit 16; and certain schedules in Exhibit 4 which contains employee wages and salaries. Your justification for having the Commission handle this material as confidential is that the public disclosure of the information would compromise their competitive position in the industry and result in an unfair commercial advantage to their competitors, and that Exhibit 4 contains information of a personal nature.

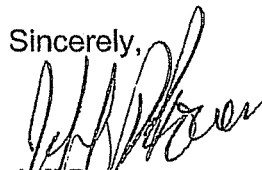
Based on a review of the information and pursuant to KRS 61.878 and 807 KAR 5:001, Section 7, the Commission has determined that you have failed to demonstrate that the information you seek to keep confidential in Exhibit 12 and Exhibit 16 is "generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to {your} competitors..." as set forth in KRS 61.878(c)(1), and therefore does not meet the criteria for confidential protection, and is hereby **DENIED**.

The Commission in its review of the information in Exhibit 4 contained in your Petition has concluded that only a portion of the information contained in Exhibit 4 meets the criteria for confidential protection. KRS 61.878(1)(a) authorizes confidentiality for information of a personal nature, i.e. the name of an individual. However, the position

and salary are not subject to withholding under KRS 61.878(1)(a) as they are not of a "personal nature". Therefore, in order to afford confidential protection to the names of the individuals listed in Exhibit 4, Water Service Corporation of Kentucky will need to provide the Commission within 20 days, a redacted version excluding only the names of the individuals if you want it to remain confidential. Your Petition is therefore **DENIED** as to those portions of Exhibit 4 other than the individuals' names. The remaining information contained in Exhibit 4 does not meet the criteria for confidentiality and therefore cannot be redacted.

The information denied confidential treatment will be withheld from public inspection for 20 days from the date of this letter in accordance with 807 KAR 5:001. If you disagree with the Commission's decision, you may seek a rehearing with the Commission within 20 days of the date of this letter under the provisions of KRS 278.400.

Sincerely,



Jeff Derouen
Executive Director

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cc: Parties of Record