

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION OF KENTUCKY-)	
AMERICAN WATER COMPANY'S ALLEGED)	CASE NO.
VIOLATION OF A TARIFF AND COMMISSION)	2022-00299
REGULATIONS REGARDING METERS AND)	
MONITORING CUSTOMER USAGE)	

ORDER

This matter arises upon a motion filed by Kentucky-American Company (Kentucky-American) on February 10, 2023, requesting confidential treatment for Kentucky-American's response to a request for information and a reference made in its "Read1st" letter filed March 14, 2023, requesting confidential treatment for the same information.

In the February 10, 2023 motion, Kentucky-American requested confidential treatment pursuant to KRS 61.878 and 807 KAR 5:001E, Section 13, for Kentucky-American's response to Attorney General's First Request for Information (Attorney General's First Request), Item 20. Kentucky-American requested confidential treatment for five years for the designated material, which contains an internal audit presentation regarding issues related to meter readings and a chart of meter read results as part of meter reading tests.

In the March 14, 2023 letter filed with Kentucky-American's response to the Attorney General's Second Request for Information (Attorney General's Second Request), Kentucky-American asserted that its responses to Attorney General's Second

Request related to the designated material for which confidential treatment was requested on February 10, 2023, and thus should receive confidential treatment.

LEGAL STANDARD

The Commission is a public agency subject to Kentucky Open Records Act,¹ which requires that all public records “be open for inspection by any person, except as otherwise provided by KRS 61.870 to KRS 61.884.² The exceptions to the free and open examination of public records should be strictly construed.³ The party requesting that the materials be granted confidential protection has the burden of establishing that one of the exemptions is applicable.⁴

Commission regulation 807 KAR 5:001E, Section 13(2), establishes the procedure for requesting confidential treatment, which includes that the request be made by a motion that establishes the specific grounds for confidential treatment pursuant to KRS 61.878, states the time period for treating the material as confidential and the reasons for the time period, and identifies the material for which confidential treatment is requested.

KRS 61.878(1)(a) grants confidential protection of information that if disclosed would create an invasion of personal privacy.⁵ 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.”

¹ KRS 61.870 through 61.884.

² KRS 61.872(1).

³ KRS 61.878.

⁴ 807 KAR 5:001E, Section 13(2)(c).

⁵ KRS 61.878(1)(a).

FEBRUARY 10, 2023 MOTION

As a basis for its request for confidential treatment for Kentucky-American's response to Attorney General's First Request, Item 20, Kentucky-American asserted that the designated material is generally recognized as confidential and proprietary, and thus the designated material should be granted confidential treatment under KRS 61.878(1)(c)(1). Kentucky-American argued that disclosure of the chart of meter read error results would cause competitive harm regarding Kentucky-American's ability to negotiate for the purchase of meters and supporting controls in the future. Kentucky-American stated that the suppliers of meter brands included in the charts demonstrate who Kentucky-American views favorably and may increase prices to Kentucky-American and could harm Kentucky-American's relationships with meter suppliers that Kentucky-American does not view as favorably.

MARCH 14, 2023 READ1ST LETTER

In the March 14, 2023, letter, Kentucky-American asserted that its responses to Attorney General's Second Request related to the designated material for which confidential treatment was requested on February 10, 2023, and requested confidential treatment for the material for "the same reasons set forth in KAW's February 10, 2023 Petition for Confidential Treatment."⁶ Kentucky-American did not file a petition requesting confidential treatment and did not identify which of the responses contained the designated material for which confidential treatment was sought.

⁶ Kentucky-American's Read1st Letter (filed Mar. 24, 2023).

DISCUSSION AND FINDINGS

Having considered the February 10, 2023 motion and the material at issue, the Commission finds that the designated material does not meet the criteria for confidential treatment and should not be exempted from public disclosure pursuant to 807 KAR 5:001E, Section 13, and KRS 61.878(1)(c)(1). The presentation contains information directly related to the focus of this investigation of Kentucky-American's meter reading and billing issues. The Commission needs to be able to fully and specifically address the meter reading and billing issues in the Commission's final determination in the proceeding. For reasons of transparency and accountability, Kentucky-American ratepayers should be aware of the facts that the Commission relied upon in its decision. Here, the benefit of public dissemination in this case far outweighs Kentucky-American's interest in confidentiality.

The Commission notes that the designated material includes a chart containing specific meter-reading information with meter manufacturer names. The Commission concludes that this material does not contain useful information or give context to the random sample of meter reads. This is because the listed make and model of the meters do not encompass all of Kentucky-American's meters.⁷ The chart does not contain any pricing information or specific information about the sample as compared to the entirety of the meters utilized by Kentucky American. The chart does not contain control group information allowing for a party to analyze the information to reach any useful conclusions.

⁷ Case No. 2023-00030, *Electronic Application of Kentucky-American Water Company to Amend Tariff to Revise Qualified Infrastructure Charge*, incorporated as part of this case, contains an additional listing of meters utilized by Kentucky-American.

Having considered the March 14, 2023 motion and the material at issue, the Commission finds that the designated material does not meet the criteria for requesting or granting confidential treatment established for 807 KAR 5:001E, Section 13, and thus the request made by letter should be denied. Kentucky-American's purported request for confidential treatment was contained in a single sentence in a "Read First" letter filed, pursuant to Commission regulations, as an introductory file that contains a general description of the filing, a list of all materials contained in the filing, and a statement that the materials in the electronic submission are a true representation of the materials in paper medium. As noted above, Kentucky-American failed to file a motion requesting confidential treatment, failed to identify the specific material for which it requested confidential treatment, and, instead of setting forth the basis and time period for granting confidential treatment, merely referenced the February 10, 2023 motion.

IT IS THEREFORE ORDERED that:

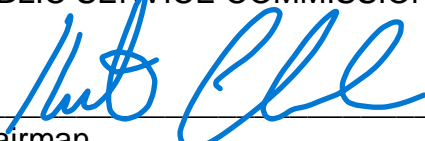
1. Kentucky-American's motion for confidential treatment filed on February 10, 2023, is denied.
2. Kentucky-American's request for confidential treatment filed in a Read1st letter on March 14, 2023, is denied.
3. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.
4. If Kentucky-American objects to the Commission's determination that the requested material should not be granted confidential treatment, it must seek either rehearing pursuant to KRS 278.400 or judicial review of this Order pursuant to

KRS 278.410. Failure to exercise either of these statutory rights will be deemed as agreement with the Commission's determination of which materials should be granted confidential treatment.

5. Within 30 days of the date of service of this Order, Kentucky-American shall file a revised version of the designated material for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

6. The designated material for which Kentucky-American's request for confidential treatment has been denied shall neither be placed in the public record nor made available for inspection for 30 days from the date of service of this Order in order to allow Kentucky-American to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
JUN 05 2023
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KENTUCKY PUBLIC
SERVICE COMMISSION

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