

that one of the exceptions is applicable.³ KRS 61.878(1)(a) exempts “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”⁴ 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.”⁵

DISCUSSION

Present and Forecasted Chemical Pricing and Purchased Water Expenses provided in Response to Staff’s First Request Item No. 1

In support of its petition, Kentucky-American argued that the present and forecasted chemical prices and purchased water expenses provided in response to Staff’s First Request Item No. 1 should be afforded confidential treatment because disclosure of pricing information could put Kentucky-American at a commercial disadvantage in negotiations with suppliers.

Having considered the petition and the material at issue, the Commission finds that Kentucky-American’s petition should be granted in part and denied in part. The Commission finds that the forecasted chemical prices and forecasted purchased water expenses contained in Kentucky-American’s response to Staff’s First Request Item No. 1 are records that meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878 (1)(c)(1) and 807 KAR 5:001, Section 13.

³ 807 KAR 5:001, Section 13(2)(c).

⁴ KRS 61.878(1)(a).

⁵ KRS 61.878(1)(c)(1).

The Commission has previously found that forecasted chemical prices should be afforded confidential treatment.⁶

The Commission further finds that the request for confidential treatment should be denied for present chemical prices and present purchased water expenses contained in Kentucky-American's response to Staff's First Request Item No. 1, because the present prices are a matter of public concern. Denying confidential treatment will allow for the transparency necessary for the utility ratepayers to know the information relied upon in the Commission's final decision. Therefore, information related to present pricing found in response to Staff's First Request Item No. 1 does not meet the criteria for confidential treatment and should not be exempted from public disclosure pursuant to KRS 61.878 (1)(c)(1) and 807 KAR 5:001E, Section 13.

Spreadsheet of Current and Future Wages for Employees provided in Response to Staff's First Request Item No. 1

In support of its petition, Kentucky-American argued that disclosure of the spreadsheet of current and future wages provided in response to Staff's First Request Item No. 1 would violate employees' privacy rights and employees have a reasonable expectation of privacy. Kentucky-American argued that the information is personal and private information, and that disclosure would not be in line with the Open Records Act's purpose. Kentucky-American argued that the Commission has previously recognized that salary information should be confidential.⁷

⁶ Case No. 2018-00358, *Electronic Application of Kentucky-American Water Company for an Adjustment of Rates* (Ky. PSC Mar. 14, 2019), Order at 2, 4–5.

⁷ Case No. 1989-00374, *In the Matter of Application of Louisville Gas and Electric Company for an Order Approving an Agreement and Plan of Exchange and to Carry Out Certain Transactions in Connection Therewith* (Ky. PSC Apr. 30, 1997), Order at 2.

Having considered the petition and the material at issue, the Commission finds that Kentucky-American's petition should be granted in part and denied in part. The Commission finds that the spreadsheet of current and future wages of employees contained in Kentucky-American's response to Staff's First Request Item No. 1 that relate to non-executive compensation are records that meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878 (1)(a) and 807 KAR 5:001, Section 13. The Commission has previously found that such information should be afforded confidential treatment and disclosure would be a violation of an employee's expectation of privacy.⁸

The Commission further finds that the request for confidential treatment should be denied for the executive compensation provided in the spreadsheet of current and future wages for employees provided in response to Staff's First Request Item No. 1. The Commission has previously found that executive compensation should not be afforded confidential treatment.⁹ Therefore, information related to executive compensation found in response to Staff's First Request Item No. 1 does not meet the criteria for confidential treatment and should not be exempted from public disclosure pursuant to KRS 61.878 (1)(a) and 807 KAR 5:001E, Section 13.

⁸ See Case No. 2020-00104, *Electronic. Application of Clark Energy Cooperative, Inc. for a General Adjustment of Rates Pursuant to Streamlined Procedure Pilot Program Established in Case No. 2018-00407* (Ky. PSC Jan. 25, 2022), Order at 3.

⁹ See Case No. 2021-00407, *Electronic. Application of South Kentucky Rural Electric Cooperative Corporation for a General Adjustment of Rates, Approval of Depreciation Study, and Other General Relief* (Ky. PSC Aug. 30, 2022), Order at 2.

Response to Staff's First Request Item 4 and 5

In support of its petition, Kentucky-American argued that the accounting and budgeting practices provided in response to Staff's First Request Items No. 4 and 5 are proprietary and extensive resources were invested by its parent company, American Water Works Company, to create it. Kentucky-American argued that giving competitors free access to the materials would put Kentucky-American at a competitive disadvantage.

Having considered the petition and the material at issue, the Commission finds that Kentucky-American's petition should be granted for the accounting and budgeting practices and procedures provided in response to Staff's First Request Items No. 4 and 5. The Commission finds that this information meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878 (1)(c)(1) and 807 KAR 5:001, Section 13. Release of Kentucky-American's internal practices and procedures could result in a competitive disadvantage. The Commission has previously found that internal accounting procedures meet the criteria for confidential treatment.¹⁰

Comparison of Medical Benefits provided in response to Staff's First Request Item No. 29 and Employee Health Care, Dental, and Vision Plans provided in response to Staff's First Request Item 39

Kentucky-American argued that the comparison of medical benefits provided in response to Staff's First Request Item 29 and Employee Health Care, Dental, and Vision Plans provided in response to Staff's First Request Item 39 are proprietary and extensive resources were invested by the American Water Works Company to create it. Kentucky-

¹⁰ Case No. 2021-00129, *Electronic Application and Request for Decision by April 5, 2021 of Kentucky Power Company for an Order Approving Accounting Practices to Establish a Regulatory Asset Related to the Extraordinary Expenses Incurred by Kentucky Power Company in Connection with Three February 2021 Major Storm Events* (Ky. PSC Apr. 13, 2021), Order at 1–2.

American argued that giving competitors free access to the materials would put Kentucky-American at a competitive disadvantage, and that disclosure of this information could give competitors an advantage in the hiring of employees.

Having considered the petition and the material at issue, the Commission finds that Kentucky-American's petition should be denied. The Commission has previously found that aggregate employee compensation, such as healthcare and dental plans that are not tied to a specific employee, should not be entitled to confidential treatment.¹¹ Therefore, comparison of medical benefits provided in response to Staff's First Request Item No. 29 and the employee health care, dental, and vision plans provided in response to Staff's First Request Item No. 39 do not meet the criteria for confidential treatment and should not be exempted from public disclosure pursuant to KRS 61.878 (1)(c)(1) and 807 KAR 5:001E, Section 13.

Attachments 1, 2, and 3 provided in response to Staff's First Request Item 33

Kentucky-American argued that the redacted information from the 2023 Annual Performance Plans for union and non-union employees and the 2023 Long Term Performance plan provided in response to Staff's First Request Item 33 Attachments 1, 2, and 3 should be afforded confidential treatment because this information is proprietary and extensive resources were invested by American Water Works Company to create it. Kentucky-American argued that giving competitors free access to the materials would put Kentucky-American at a competitive disadvantage and disclosure of this information could give competitors an advantage in hiring of employees.

¹¹ Case No. 2020-00290, *Electronic Application of Bluegrass Water Utility Operating Company, LLC for an Adjustment of Rates and Approval of Construction* (Ky. PSC Dec. 27, 2021), Order at 12.

Having considered the petition and the material at issue, the Commission finds that Kentucky-American's petition should be granted in part and denied in part. The Commission finds that the redacted information related to non-executive employee compensation provided in Attachments 1, 2, and 3 provided in response to Staff's First Request Item 33 are records that meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878 (1)(c)(1) and 807 KAR 5:001, Section 13.

The Commission finds that redacted information relating to executive employee compensation (specifically information found on pages 37 and 38 of the Long-Term Performance Plan), should be denied. The Commission has previously found that information relating to executive employee compensation in performance plans should not be afforded confidential treatment.¹² Therefore, the redacted information relating to executive compensation provided in the 2023 Annual Performance Plans for union and non-union employees, 2023 Long Term Performance Plan Attachments 1, 2, and 3 provided in response to Staff's First Request Item 33 do not meet the criteria for confidential treatment and should not be exempted from public disclosure pursuant to KRS 61.878 (1)(c)(1) and 807 KAR 5:001E, Section 13.

Performance Pay Attachment 4 provided in Response to Staff's First Request Item No. 33 and Salary and Benefit Information by Group Provided in Response to Staff's First Request Item No. 37

Kentucky-American argued that disclosure of performance pay information from Attachment 4 provided in response to Staff's First Request Item No. 33 and the salary

¹² Case No. 2015-00418, *Application of Kentucky-American Water Company for an Adjustment of Rates* (Ky. PSC Apr. 17, 2019), Order at 2–3.

information by group provided in response to Staff's First Request Item No. 37 would violate employees' privacy rights and employees have a reasonable expectation of privacy. Kentucky-American also argued that this information is personal and private in nature, and that disclosure would not be in line with the Open Record Act's purpose. Kentucky-American argued that the Commission has previously recognized that salary information should be confidential.¹³

Having considered the petition and the material at issue, the Commission finds that Kentucky-American's petition should be granted. The Commission finds that performance pay information provided in Attachment 4 is provided in response to Staff's First Request Item No. 33 and the salary information by group provided in response to Staff's First Request Item No. 37 are records that meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878 (1)(a) and 807 KAR 5:001, Section 13. The redacted information is related specifically to non-executive employees. Commission has previously found that non-executive compensation should be afford confidential treatment.¹⁴

IT IS THEREFORE ORDERED that:

1. Kentucky-American's petition for confidential treatment is granted in part and denied in part.
2. Kentucky-American's petition for confidential treatment for forecasted chemical prices and forecasted purchased water expenses contained in Kentucky-American's response to Staff's First Request Item No. 1; spreadsheet of current and

¹³ Case No. 1989-00374, Apr. 30,1997 Order at 2

¹⁴ See Case No. 2018-00358, Mar. 14, 2019 Order at 2.

future wages of employees contained in Kentucky-American's response to Staff's First Request Item No. 1 that relate to non-executive compensation; accounting and budgeting practices provided in response to Staff's First Request Items 4 and 5; redacted information related to non-executive employee compensation provided in Attachments 1, 2, and 3 provided in response to Staff's First Request Item 33; performance pay information from Attachment 4 provided in response to Staff's First Request Item No. 33; and the salary information by group provided in response to Staff's First Request Item No. 37 is granted.

3. Kentucky-American's petition for confidential treatment for present chemical prices and present purchased water expenses contained in Kentucky-American's response to Staff's First Request Item No. 1; executive compensation provided in the spreadsheet of current and future wages for employees provided in response to Staff's First Request Item No. 1; comparison of medical benefits provided in response to Staff's First Request Item No. 29 and the employee health care, dental, and vision plans provided in response to Staff's First Request Item No. 39; the redacted information relating to executive compensation provided in the 2023 Annual Performance Plans for union and non-union employees, and the 2023 Long Term Performance Plan Attachments 1, 2, and 3 provided in response to Staff's First Request Item 33 is denied.

4. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for five years or until further Order of this Commission.

5. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).

6. Kentucky-American shall inform the Commission if the designated material granted confidential treatment becomes publicly available or no longer qualifies for confidential treatment.

7. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, Kentucky-American shall have 30 days from receipt of written notice of the request to demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If Kentucky-American is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

8. The Commission shall not make the requested material for which confidential treatment was granted available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow Kentucky-American to seek a remedy afforded by law.

9. 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.

10. If Kentucky-American objects to the Commission's determination that the requested material 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 shall be granted confidential treatment.

11. 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.

12. 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 to allow Kentucky-American to seek a remedy afforded by law.

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PUBLIC SERVICE COMMISSION



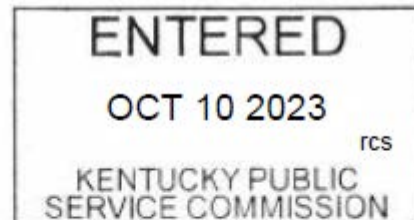
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