

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF WATER SERVICE)
CORPORATION OF KENTUCKY FOR AN) CASE NO. 2013-00237
ADJUSTMENT OF RATES)

ORDER REGARDING REQUEST FOR CONFIDENTIAL TREATMENT

On January 24, 2014, Water Service Corporation of Kentucky (“WSKY”) moved, pursuant to 807 KAR 5:001, Section 13, for certain materials filed with the Commission to be afforded confidential treatment and not be placed in the public record subject to public inspection in perpetuity.

In support of its motion, WSKY states that the information it is requesting to be held confidential is contained in its Responses to the Attorney General’s (“AG”) Second Request for Information, Item 17. The information is described as components of employees’ salaries.

WSKY does not have any employees. Utilities, Inc., WSKY’s parent corporation, employs the individuals who provide services to WSKY.¹ Employee salaries of Utilities, Inc. are allocated to WSKY based on a formula regarding the number of equivalent residential connections.

In response to the AG’s request, WSKY filed two Schedules. One schedule contains employee names and salary components of the Utilities, Inc. staff who either work in Kentucky or are customer service representatives. WSKY requests confidential

¹ Water Service Corporation, WSKY’s sister corporation, may also have employees providing services to WSKY.

protection for the names of the staff on that schedule. WSKY asserts that the employees' salary information is of a personal nature. WSKY's request for redaction of employee names meets the criteria for confidential treatment pursuant to KRS 61.878(1)(a) and 807 KAR 5:001, Section 13.

The other schedule identifies employees who do not work in Kentucky or are not customer service representatives by non-descript numbers, but no names, along with salary components pertaining to the remaining Utilities, Inc. employees. For this schedule, WSKY requests that it be granted confidential protection in its entirety, claiming disclosure would result in an unfair commercial advantage to its competitors. WSKY cites to KRS 61.878(1)(c)(1),² Ky. OAG 97-ORD-66 at 9 (April 17, 1997), and *Am. Postal Workers Union, AFL-CIO v. U.S. Postal Serv.*, 742 F. Supp. 2d 76 (D.D.C. 2010) to support its request to prevent disclosure of any salary information for employees of Utilities, Inc. other than the salaries of employees who either work in Kentucky or are customer service representatives.

The 1997 AG opinion involved a public agency seeking to keep records regarding public employees confidential. The open records request discussed in the opinion did not involve records disclosed to a public agency. Ky. OAG 97-ORD-66 at 3 (April 17, 1997). The 1997 AG Opinion confirmed that KRS 61.878(1)(c)(1) permits records confidentially disclosed to an agency to be held confidential if disclosure of the records would permit an unfair commercial advantage to competitors. The opinion does

² KRS 61.878(1)(c)(1) exempts from inspection "records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records."

not indicate that disclosure of salary information without disclosure of the employee name would permit an unfair commercial advantage.

The records sought in *American Postal Workers Union* were recent pay for performance (“PFP”) bonus and pay increases identified by employee name, level, title, PFP lump-sum amount and PFP wage increase. *Am. Postal Workers Union* at 78. The United States Postal Service was concerned that release of bonus and pay increase information would allow competitors to recruit talented employees from the United States Postal Service. *Id.* at 82-83. Publication of salary information while redacting employee names prevents any unfair commercial advantage.

Furthermore, WSKY is seeking to recover the portion of Utilities, Inc. salaries allocated to WSKY. WSKY ratepayers have a right to know the salaries being paid and how the salaries are being allocated.

Having carefully considered the motion and the materials at issue, the Commission finds that:

1. The request to redact the names of Utilities, Inc.’s employees either working in Kentucky or as customer service representatives from the schedule containing components of those employees’ salaries meets the criteria for confidential treatment, and the names should be exempted from public disclosure pursuant to KRS 61.878(1)(a) and 807 KAR 5:001, Section 13.

2. The request to redact in its entirety the schedule containing employee numbers and all salary information pertaining to employees of Utilities, Inc. based on KRS 61.878(1)(c)(1) as an unfair commercial advantage to competitors is overbroad and should be denied.

IT IS THEREFORE ORDERED that:

1. WSKY's motion to protect as confidential the names of Utilities, Inc.'s employees either working in Kentucky or as customer service representatives as shown on the schedule containing their salary components is hereby granted for an indefinite period of time, or until further Orders of this Commission.

2. WSKY's motion to redact as confidential in its entirety the schedule containing employee numbers and salary components for Utilities, Inc. employees who do not work in Kentucky or do not work as a customer service representative is denied.

3. When the materials granted confidentiality pursuant to ordering paragraph 1 above are used in any proceeding, they shall be in compliance with 807 KAR 5:001, Section 13(9).

4. Movant shall inform the Commission if the said confidential materials become publicly available or no longer qualify for confidential treatment.

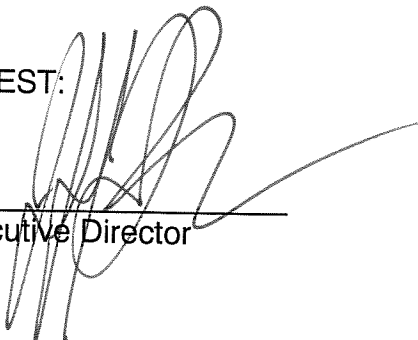
5. If a non-party to this proceeding requests to inspect materials granted confidential treatment by this Order and the period during which the materials have been granted confidential treatment has not run, the Movant shall have 20 days from receipt of written notice of the request to demonstrate that the materials still fall within the exclusions from disclosure requirements established in KRS 61.878. If Movant is unable to make such demonstration, the requested materials shall be made available for inspection. Otherwise the Commission shall deny the request for inspection.

6. The Commission shall not make the requested materials available for inspection for 20 days following an Order finding that the materials no longer qualify for confidential treatment in order to allow Movant to seek a remedy afforded by law.

By the Commission

ENTERED
MAY 05 2014
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2013-00237

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