

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY-)	
AMERICAN WATER COMPANY FOR AN)	CASE NO.
ADJUSTMENT OF RATES)	2015-00418

ORDER

On February 12, 2016, Kentucky-American Water Company ("KAWC") pursuant to 807 KAR 5:001, Section 13(2), moved that certain materials filed with the Commission be afforded confidential treatment, not be placed in the public record subject to public inspection, and be held confidential in perpetuity ("February 12, 2016 Petition").

In support of its motion, KAWC stated that the materials in question are supplied in response to Commission Staff's First Request for Information ("Staff's First Request"). Staff's First Request, Items 3.a. and 3.c., required KAWC to supply a copy of the work papers and calculations used to develop its forecasted test-period financial information, and KAWC was required to supply the information in both paper and electronic format. Staff's First Request, Item 4.b., required KAWC to supply internal accounting manuals, directives, policies, and procedures that have been modified, amended, or replaced since Case No. 2010-00036.¹ Staff's First Request, Item 16, required KAWC to supply a copy of all wage, compensation, and employee benefits studies, analyses, and surveys that KAWC has conducted, commissioned, or used. Staff's First Request, Item

¹ Case No. 2010-00036, *Application of Kentucky-American Water Company for an Adjustment of Rates Supported by a Fully Forecasted Test Year* (filed Mar. 16, 2010), response to Commission Staff's First Request for Information.

18.c., required KAWC to state the level of incentive pay awarded to all individuals participating in incentive pay plans for the previous five calendar years compared to the level of incentive pay available to each participant in the forecasted period. Staff's First Request, Item 25.a., required KAWC to provide a copy of the most recent actuarial study that was performed to calculate KAWC's annual accrual of pension costs and Other Post-Retirement Employee Benefits costs for accounting purposes.

KAWC stated that the response to Staff's First Request, Items 3.a. and 3.c., includes "employees' job titles, identification numbers, and compensation information,"² and the response to Staff's First Request, Item 18.c., "lists not only the employees (by title) that are eligible to receive incentive compensation, but the amount each employee received for the last five years."³ KAWC relies upon *Zink v. Department of Workers' Claims, Labor Cabinet*, 902 S.W.2d, 825 (Ky. App. 1994) ("*Zink*") in support of its position that the information should receive confidential protection.

In *Zink*, the Court of Appeals of Kentucky stated that the personal privacy analysis under KRS 61.878(1)(a) is a two-step process. First, a determination must be made as to whether the information is of a "personal nature."⁴ Thereafter, if the information is of a personal nature, then a determination must be made as to whether

² February 12, 2016 Petition at 2.

³ *Id.*

⁴ *Zink* at 828, citing *Kentucky Bd. of Examiners of Psychologists v. Courier-Journal & Louisville Times Co.*, 826 S.W.2d 324 (Ky. 1992).

disclosure “would constitute a clearly unwarranted invasion of personal privacy.”⁵ For this second step, “the circumstances of a given case will affect the balance.”⁶

The Commission finds that an employee's identification number, job title, and compensation are information of a personal nature. With regard to the issue of balancing the interests, the Commission finds that employee identification numbers, job titles, and compensation for non-executive officers contained in KAWC's response to Staff's First Request, Items 3.a. and 3.c., are entitled to confidential protection. We find, however, that the executive salaries are an expense in the rate base calculations, and we have held that such salary compensation is not entitled to confidential protection.⁷ We find that the employee identification numbers for the executive officers contained in KAWC's response to Staff's First Request, Items 3.a. and 3.c., are entitled to confidential protection; however, the job title and compensation information is not entitled to confidential protection.

For KAWC's response to Staff's First Request, Item 18.c., we find that the job title and compensation information for non-executive officers contained in the response are information of a personal nature and are entitled to confidential protection. For the executive officers, we find that the job title and compensation information are of a personal nature; however, they are not entitled to confidential protection for the reasons previously stated.

⁵ *Id.*

⁶ *Id.*

⁷ Case No. 2014-00371, *Application of Kentucky Utilities Company for an Adjustment of Its Electric Rates* (Ky. PSC Jan. 20, 2016); *See also* Case No. 2013-00167, *Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates for Gas Service* (Ky. PSC Sept. 27, 2013).

For KAWC's responses to Staff's First Request, Items 4.b., 16, and 25.a., we find that the materials submitted with the petition for confidential treatment fall within the category of information generally recognized as confidential or proprietary which, if openly disclosed, would permit an unfair commercial advantage to competitors of KAWC. Therefore, we find that they are entitled to confidential protection as per KRS 61.878(1)(c)1.

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

1. The materials for which KAWC seeks confidential treatment meet the criteria for confidential treatment and are exempted from public disclosure pursuant to KRS 61.878(1) and 807 KAR 5:001, Section 13, with the exception of executive officer compensation information.

2. Pursuant to KRS 61.878, the materials granted confidential protection should not be placed in the public record or made available for public inspection for an indefinite period, or until further Orders of this Commission.

3. KAWC has failed to demonstrate that the materials contained in its responses regarding executive officer compensation information meet the criteria for protection pursuant to KRS 61.878 and 807 KAR 5:001, Section 13. Pursuant to 807 KAR 5:001, Section 13(5), these materials shall not be placed in the public record for the period permitted to request rehearing or bring an action for review.

IT IS THEREFORE ORDERED that:

1. KAWC's motion for confidential protection is granted in part and denied in part.

2. Pursuant to KRS 61.878, excepting executive officer compensation information, the information for which KAWC requests confidential protection shall not be placed in the public record or made available for public inspection for an indefinite period, or until further Order of the Commission.

3. The executive officer compensation information for which KAWC requests confidential protection does not fall within the scope of KRS 61.878 and therefore is denied confidential protection.

4. Within 14 days of the date of this Order, KAWC shall file a revised response reflecting as unredacted the information which has been denied confidential treatment in accordance with ordering paragraphs 2 and 3.

5. Use of the materials in question in any Commission proceeding shall be in compliance with 807 KAR 5:001, Section 13(9).

6. KAWC shall inform the Commission if the materials in question become publicly available or no longer qualify for confidential treatment.

7. If a non-party to this proceeding requests to inspect materials granted confidential treatment by this Order, the KAWC 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 KAWC is unable to make such demonstration, the requested materials shall be made available for inspection.

8. 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 KAWC to seek a remedy afforded by law.

By the Commission

ENTERED
AUG 26 2016
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2015-00418

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