

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY-	)	
AMERICAN WATER COMPANY FOR AN	)	
ADJUSTMENT OF RATES, A CERTIFICATE OF	)	
PUBLIC CONVENIENCE AND NECESSITY FOR	)	CASE NO.
INSTALLATION OF ADVANCED METERING	)	2023-00191
INFRASTRUCTURE, APPROVAL OF	)	
REGULATORY AND ACCOUNTING	)	
TREATMENTS, AND TARIFF REVISIONS	)	

ORDER

On June 30, 2023, Kentucky-American Water Company (Kentucky-American) filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for five years for information provided in their application and supporting materials, except for maps provided in Exhibit WAL-1, which Kentucky-American is asking the Commission to grant confidential treatment for an indefinite period.

LEGAL STANDARD

The Commission is a public agency subject to Kentucky's Open Records Act, which requires that all public records “be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884.”<sup>1</sup> Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.<sup>2</sup> The

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<sup>1</sup> KRS 61.872(1).

<sup>2</sup> See KRS 61.871.

party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.<sup>3</sup> 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.”<sup>4</sup> KRS 61.878(1)(m) permits an exception for records that if disclosed would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act.<sup>5</sup> The exemption is limited to certain types of records, including:

(f) Infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems.<sup>6</sup>

(g) the following records when their disclosure will expose a vulnerability referred to in this subparagraph: detailed drawings, schematics, maps or specifications of structural elements . . . of any building or facility owned, occupied, leased, or maintained by a public agency.<sup>7</sup>

A terrorist act is defined as including a criminal act intended to “[d]isrupt a system” identified in the above.<sup>8</sup>

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<sup>3</sup> 807 KAR 5:001, Section 12(2)(c).

<sup>4</sup> KRS 61.878(1)(c)(1).

<sup>5</sup> KRS 61.878(1)(m)(1).

<sup>6</sup> KRS 61.878(1)(m)(1)(f).

<sup>7</sup> KRS 61.878(1)(m)(1)(g).

<sup>8</sup> KRS 61.878(1)(m)(2)(b).

## DISCUSSION AND FINDINGS

### 2023 General Rate Case Total Renumeration Study

Kentucky-American provided a study by Robert V. Mustich, who is the managing director and east region rewards business leader for Willis Towers Watson. In support of its petition, Kentucky-American argued that the study has information that if released would provide a commercial advantage to competitors in hiring and competitors would benefit from using the study without having to dedicate resources into creating their own. Kentucky-American further argued that the study has information relating to its marketing positioning and that the Commission previously granted confidential treatment to similar information.<sup>9</sup>

Having considered the petition and the material at issue, the Commission finds that Kentucky-American's petition should be granted. The Commission finds that the designated material contained in Kentucky-American's 2023 General Rate Case Total Renumeration Study 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. Disclosing the study could result in Kentucky-American having a commercial disadvantage. The Commission has previously held that similar studies should be granted confidential treatment.<sup>10</sup> The Commission has also previously found

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<sup>9</sup> Case No. 2018-00358, *Electronic Application of Kentucky-American Water Company for an Adjustment of Rates* (Ky. PSC Mar. 14, 2019), Order.

<sup>10</sup> See Case No. 2015-00418, *Application of Kentucky-American Water Company for an Adjustment of Rates* (Ky. PSC Apr. 17, 2019), Order.

that reports by Willis Tower Watson should be granted confidential treatment because they were created by a third party for the sole use of the utility.<sup>11</sup>

#### Chemical Pricing Information for Thomas G O'Drain's Testimony

Contained in Thomas G. O'Drain's testimony was information related to chemical pricing. Kentucky-American argued that if such information was disclosed it could harm its ability to negotiate with suppliers in the future and provide an unfair commercial advantage to suppliers.

Having considered the petition and the material at issue, the Commission finds that Kentucky-American's petition should be granted. The Commission finds that the designated material contained in Thomas G. O'Drain's testimony 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 has previously found that contractor bid pricing should be subject to confidential treatment because disclosure could put the company at a commercial disadvantage in future negotiations.<sup>12</sup>

#### Vendor names provided in Melissa Schwarzell's Testimony and Kentucky American Water's Advanced Metering Infrastructure Deployment Plan

Kentucky-American sought confidential treatment pursuant to KRS 61.878(1)(c)(1) for vendor names provided in Melissa Schwarzell's Testimony and Kentucky American Water's Advanced Metering Infrastructure Deployment Plan. Kentucky-American argued

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<sup>11</sup> Case No. 2021-00190, *Electronic Application of Duke Energy Kentucky, Inc., for: 1) an Adjustment of the Natural Gas Rates; 2) Approval of New Tariff; and 3) All Other Required Approvals, Waivers, and Relief* (Ky. PSC Feb. 25, 2022), Order at 6.

<sup>12</sup> Case No. 2020-00018, *Electronic Investigation into the Operational Capacity and Infrastructure of Grayson Rural Electric Cooperative Corporation* (Ky. PSC Mar. 9, 2021), Order at 1–2.

that disclosure of vendor names could influence negotiations and the selected vendor could charge higher prices for the difference between their option and other options. Kentucky-American also argued that the release of names could damage its relationship with the vendors.

Having considered the petition and the material at issue, the Commission finds that the vendor names provided in Melissa Schwarzell's Testimony and Kentucky American Water's Advanced Metering Infrastructure Deployment Plan should be denied. Kentucky-American has provided that as a subsidiary of American Water they can choose between Badger and Neptune for small meter hardware after pricing and performance is negotiated every 2-3 years.<sup>13</sup> These two vendors were previously selected by American Water as strategic partners for Meter and Endpoint Software.<sup>14</sup> Kentucky-American has failed to meet its burden of proof as to how release of vendor names alone would put the company at a competitive disadvantage, as the provided reasoning did not relate to the names but to the pricing information.

Kentucky-American has previously argued that disclosing the names of meter suppliers could increase prices to Kentucky-American and harm relationships with other meter-suppliers.<sup>15</sup> The Commission denied this request for confidential treatment, noting that ratepayers should be aware of the facts the Commission relied upon in its decisions.<sup>16</sup>

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<sup>13</sup>Kentucky-American's Response to Commission Staff's Second Request for Information, (filed Aug. 18, 2023) (Staff's Second Request), Item No. 11.

<sup>14</sup> Kentucky-American's Response to Staff's Second Request, Item No. 11.

<sup>15</sup> No. 2022-00299, *Electronic Investigation of Kentucky-American Water Company's Alleged Violation of a Tariff and Commission Regulations Regarding Meters and Monitoring Customer Usage* (Ky. PSC June 5, 2023), Order at 3.

<sup>16</sup> No. 2022-00299, June 5, 2023 Order at 4.

The Commission also noted that the information did not include pricing information or specific information that could be considered as useful information to competitors.<sup>17</sup> Therefore, the vendor names do not meet the criteria for confidential treatment and should not be exempted from public disclosure pursuant to KRS 61.878 61.878 (1)(c)(1) and 807 KAR 5:001, Section 13.

Product Data Sheets provided in Kentucky American Water's Advanced Metering Infrastructure Deployment Plan

Kentucky-American provided product data sheets from their selected vendor in its Advanced Metering Infrastructure Deployment Plan. Kentucky-American argued that the product data sheets should be granted confidential treatment because they identify the vendor names.

The Commission finds that the request for confidential treatment should be denied. As noted above, Kentucky-American has not meet its burden of proof for confidential treatment to vendor names. Furthermore, these product data sheets are freely available on the selected vendor's website. Therefore, the product data sheets do not meet the criteria for confidential treatment and should not be exempted from public disclosure pursuant to KRS 61.878 61.878 (1)(c)(1) and 807 KAR 5:001, Section 13.

Information provided in Melissa Schwarzell's Testimony and Kentucky American Water's Advanced Metering Infrastructure Deployment Plan

Kentucky-American provided installation labor costs and meter and meter component prices in Melissa Schwarzell's Testimony and Kentucky-American's Advanced Metering Infrastructure Deployment Plan. Kentucky-American argued that

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<sup>17</sup> No. 2022-00299, June 5, 2023 Order at 4.

disclosure of the information could disadvantage Kentucky-American in negotiations if vendors were aware of pricing information.

Having considered the petition and the material at issue, the Commission finds that Kentucky-American's petition should be granted. The Commission finds that the designated material contained in Melissa Schwarzell's testimony and Kentucky-American's Advanced Metering Infrastructure Deployment Plan 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 has previously found that ratepayers have a right to know the cost of assets that a public utility proposes to purchase, but that should be balanced against the financial interests of the utility.<sup>18</sup> The Commission found that the specific cost information should be treated confidentiality because releasing the specific cost information could put the utility at a competitive disadvantage in negotiations with future vendors.<sup>19</sup> Disclosure of labor costs and meter and meter component pricing would put Kentucky-American at a similar disadvantage.

#### Maps provided in Exhibit WAL-1

Kentucky-American provided maps of the locations of mains and valves for its special connections. Kentucky-American argued that disclosure of the maps could threaten public safety and is considered critical infrastructure information.

Having considered the petition and the material at issue, the Commission finds that Kentucky-American's petition should be granted. The Commission finds that the

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<sup>18</sup> No. 2018-00056, *Application of Cumberland Valley Electric, Inc. for Commission Approval for a Certificate of Public Convenience and Necessity to Install an Advanced Metering Infrastructure (Ami) System Pursuant to KRS 807 KAR 5:001 and KRS 278,020*, (Ky. PSC May 9, 2018), Order at 3–4.

<sup>19</sup> No. 2018-00056, May 9, 2018 Order at 3–4.

designated material contained in Kentucky-American's maps provided in Exhibit WAL-1 are records that meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878 (1)(m) and 807 KAR 5:001, Section 13. The Commission has previously found that disclosure of maps of Kentucky-American's water distribution system could pose a risk to public safety.<sup>20</sup> Furthermore, while the Kentucky Infrastructure Authority does show the water line distribution system, the maps provided by Kentucky-American are more detailed and provide specific information for where the special connections, water valves, and water mains are.

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 Kentucky-American's 2023 General Rate Case Total Renumeration Study, chemical pricing information for Thomas G O'Drain's Testimony, installation labor costs and meter and meter component prices in Melissa Schwarzell's Testimony and Kentucky American's Advanced Metering Infrastructure Deployment Plan, and Maps provided in Exhibit WAL-1 is granted.

3. Kentucky-American's petition for confidential treatment for vendor names provided in Melissa Schwarzell's Testimony and vendor names and product data sheets Kentucky American's Advanced Metering Infrastructure Deployment Plan is denied.

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<sup>20</sup> Case No. 2014-00258, *Application of Kentucky-American Water Company for a Certificate of Convenience and Necessity Authorizing the Construction of Richmond Road Station Filter Building Improvements* (Ky. PSC Mar. 4, 2019), Order at 1.



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.

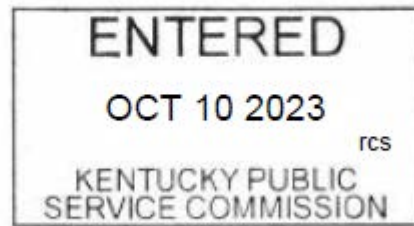
12. The designated material for which Kentucky-American's request for confidential treatment has been denied shall neither be placed in the public record nor made available for inspection for 30 days from the date of service of this Order to allow Kentucky-American to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION

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*Angie Hutton* *by KAC w/permission*  
Vice Chairman

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