

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

APR 04 2011

APPLICATION OF BIG RIVERS)
ELECTRIC CORPORATION, INC.)
FOR AN ADJUSTMENT OF RATES)

Case No. 2011-00036
PUBLIC SERVICE
COMMISSION

**ATTORNEY GENERAL’S RESPONSE IN OPPOSITION TO APPLICANT’S
PETITION FOR CONFIDENTIALITY**

Comes now the intervenor, the Attorney General of the Commonwealth of Kentucky (“Attorney General”), and states as follows for his Response in Opposition to Big Rivers’ Petition for Confidential Protection.

On or about March 18, 2011 Big Rivers (“BREC”) filed a petition seeking confidential protection (“Petition”) for information pertaining to salary and other compensation paid to both its directors and its executive officers. BREC claims disclosure of this information would violate KRS 61.878(1)(a), because it would constitute a clearly unwarranted invasion of personal privacy (BREC Petition, p. 2).

The Commission, in a letter dated April 24, 2009 to counsel for Water Service Corporation of Kentucky (“WSCK”)(referencing Case No. 2008-00563, a copy of which is attached hereto), has previously ruled that such information is **not entitled** to confidential protection, and thus denied that utility’s petition for confidential protection of information pertaining to employees’ positions and salary levels because they were not of a “personal nature,” as defined in KRS 61.878(1)(a) and in accordance with 807 KAR 5:001 § 7. In that letter denying WSCK’s petition, the Commission made it

abundantly clear that while the *names* of the employees were entitled to confidentiality, the information pertaining to their *salary* was not. The Commission thus instructed WSKK to re-file the information, redacting only the names but leaving the position and salary unredacted.

BREC's Petition goes on to cite incidences in which the Commission has granted confidentiality requests pertaining to salary information when it is tied to individual *names* of employees. BREC's petition in the instant case makes no mention of the fact that it could have submitted this information by redacting the *names* at issue, consistent with established Commission policy and precedent. Thus BREC's citation to instances in which the Commission granted confidentiality to *names* of individuals is irrelevant.

BREC also cites Commission letters in two 2003 cases, in which BREC alleges the Commission granted confidentiality for such information. However, BREC failed to attach copies of the letters to its petition, both of which are inaccessible on the Commission's website.

BREC also cites to a 1989 case in which the Commission granted protection to individual names. Thus once again, BREC fails to cite to any Commission precedent which grants confidentiality to the de-identified salary information of a utility's employees, directors or officers.

The Commission affords confidential protection upon an appropriate demonstration of need. The policy of the Commonwealth is that KRS 61.870 is to be strictly construed. In fact, KRS 61.871 states that this law is to be strictly construed even though such examination may cause inconvenience or embarrassment to public officials

or others. Company staffing and salary information, which is separate from the identity of the names of specific employees, is not generally recognized as proprietary or confidential. Furthermore, staffing levels and corresponding personnel costs frequently constitute a significant portion of O & M expense for review in a base rate case.

KRS 61.871 indicates that the disclosure of information must correspond to a material, specific, present threat of use, rather than a general unspecified claim of potential harm. For example, the test questions for a licensing examination or a real estate appraisal relating to the acquisition of property are items that correspond to a specific threat consequent to disclosure. Staffing levels and personnel expense amounts are not of the same character and are not recognized as having that character in the review of rate applications. Since this information does not correspond to a specific threat of a competitive disadvantage, it is thus not entitled to confidential protection. Therefore, BREC's Petition must be denied.

Moreover, as an anecdotal point, BREC is a cooperative owned by the three distribution cooperatives it serves, which in turn are owned by their ratepayers. These same ratepayers should be entitled to know what their ultimate transmission and generator's board and executives receive in compensation, as those costs are tied directly to their rates. One would hope that a G&T cooperative would exercise the most liberal policy in regard to transparency to its members and ultimate ratepayers. The veil of secrecy as requested here is no such way to do so, especially in light of BREC's prior executive corporate conduct, subsequent bankruptcy and now emerging in it new corporate iteration.

WHEREFORE, the Attorney General respectfully requests that the Commission DENY BREC's petition for confidential protection.

Respectfully submitted,

JACK CONWAY
ATTORNEY GENERAL



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LAWRENCE W. COOK
ASSISTANT ATTORNEYS GENERAL
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Certificate of Service and Filing

Counsel certifies that an original and ten photocopies of the foregoing were served and filed by hand delivery to Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; counsel further states that true and accurate copies of the foregoing were mailed via First Class U.S. Mail, postage pre-paid, to:

Mark A. Bailey
President and CEO
Big Rivers Electric Corporation
201 3rd St.
Henderson, KY 42420

Hon. Michael L. Kurtz
Boehm, Kurtz & Lowry
36 E. 7th St.
Ste. 1510
Cincinnati, Ohio 45202

Albert Yockey, Vice President,
Governmental Relations & Enterprise
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Hon. James M. Miller
Sullivan, Mountjoy, Stainback & Miller,
PSC
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J. Christopher Hopgood
Dorsey, King, Gray, Norment &
Hopgood
318 Second Street
Henderson, KY 42420

this 4th day of April, 2011



Assistant Attorney General



Steven L. Beshear
Governor

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Secretary
Energy and Environment Cabinet

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David L. Armstrong
Chairman

James W. Gardner
Vice Chairman

John W. Clay
Commissioner

April 24, 2009

Hon. John N. Hughes
124 West Todd Street
Frankfort, Kentucky 40601

Re: Water Service Corporation of Kentucky
Petition for Confidential Treatment received March 5, 2009
PSC Reference: Case No. 2008-00563

Dear Mr. Hughes:

The Public Service Commission has received the Petition for Confidentiality you filed on March 5, 2009 on behalf of Water Service Corporation of Kentucky, to protect certain information filed with the Commission as confidential under Section 7 of 807 KAR 5:001 and KRS 61.870 et. seq. The information you seek to have treated as confidential is described as information contained in its schedules attached to its application, and specifically described as the Independent Auditor's Report, Exhibit 12; the Distribution of Expenses Report, Exhibit 16; and certain schedules in Exhibit 4 which contains employee wages and salaries. Your justification for having the Commission handle this material as confidential is that the public disclosure of the information would compromise their competitive position in the industry and result in an unfair commercial advantage to their competitors, and that Exhibit 4 contains information of a personal nature.

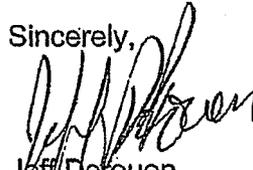
Based on a review of the information and pursuant to KRS 61.878 and 807 KAR 5:001, Section 7, the Commission has determined that you have failed to demonstrate that the information you seek to keep confidential in Exhibit 12 and Exhibit 16 is "generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to {your} competitors..." as set forth in KRS 61.878(c)(1), and therefore does not meet the criteria for confidential protection, and is hereby **DENIED**.

The Commission in its review of the information in Exhibit 4 contained in your Petition has concluded that only a portion of the information contained in Exhibit 4 meets the criteria for confidential protection. KRS 61.878(1)(a) authorizes confidentiality for information of a personal nature, i.e. the name of an individual. However, the position

and salary are not subject to withholding under KRS 61.878(1)(a) as they are not of a "personal nature". Therefore, in order to afford confidential protection to the names of the individuals listed in Exhibit 4, Water Service Corporation of Kentucky will need to provide the Commission within 20 days, a redacted version excluding only the names of the individuals if you want it to remain confidential. Your Petition is therefore **DENIED** as to those portions of Exhibit 4 other than the individuals' names. The remaining information contained in Exhibit 4 does not meet the criteria for confidentiality and therefore cannot be redacted.

The information denied confidential treatment will be withheld from public inspection for 20 days from the date of this letter in accordance with 807 KAR 5:001. If you disagree with the Commission's decision, you may seek a rehearing with the Commission within 20 days of the date of this letter under the provisions of KRS 278.400.

Sincerely,



Jeff DeFouen
Executive Director

kg/

cc: Parties of Record

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

MAR 02 2011

**PUBLIC SERVICE
COMMISSION**

In the Matter of:

APPLICATION OF WATER SERVICE)
CORPORATION OF KENTUCKY FOR AN) Case No. 2010-00476
ADJUSTMENT OF RATES)

ATTORNEY GENERAL'S RESPONSE TO
APPLICANT'S 17 FEBRUARY 2011
PETITION FOR CONFIDENTIALITY
(ITEM 11, COMMISSION STAFF'S FIRST REQUEST FOR INFORMATION)

The Attorney General, by and through his Office of Rate Intervention, provides his Response to Applicant's 17 February 2011 Petition for Confidentiality. The Attorney General requests this Commission deny the Petition and, in support, notes the following.

At issue is information associated with Petitioner's response to item 11 of the Commission Staff's initial request for information. Petitioner seeks confidential treatment for information regarding the salary and benefits for the executive employees located in the Northbrook, Illinois office.

KRS 61.878(1)(a) authorizes confidentiality for information of a personal nature, such as the name of an individual. (See 24 April 2009 letter from Jeff Derouen, Executive Director to John N. Hughes; attached.) The Attorney General has no objection to redaction of this type of information. The positions and salaries of the applicant and its corporate parent, however, are not subject to confidential treatment.

The standard that Petitioner seeks to utilize has, as its foundation, the argument that any information not readily attainable or ascertainable by others constitutes a trade secret. Petitioner states: "Only WSCK and Utilities, Inc. are in a position to know its business operations and financial condition." Otherwise stated; Petitioner's logic is that any information that the utility need not disclose to a member of the public who places a demand upon the utility warrants confidential protection at the election of the utility. This is simply an incorrect standard. During the regulatory process, there is (as there has been for decades) a public disclosure of a variety of information not otherwise attainable or ascertainable by the general public.

The Commission affords confidential protection upon an appropriate demonstration of need. The policy of the Commonwealth is that KRS 61.870 is to be strictly construed. See KRS 61.871 (law strictly construed even though such examination may cause inconvenience or embarrassment to public officials or others). Company organizational staffing and salary information (separate from the redacted identify of any specific employee) is not generally recognized as propriety or confidential. In fact, staffing levels and the corresponding personnel costs are frequently the most prominent Operations and Maintenance (O&M) expense for review during a rate case involving water utilities.

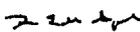
Additionally, a review of the exceptions authorized under KRS 61.878 discloses that the disclosure of information must correspond to a material, specific, present threat of use rather than a general, unspecified claim of potential

harm. For example, the test questions for a licensing examination or a real estate appraisal relating to the acquisition of property are items that correspond to a specific threat consequent to disclosure. Staffing levels and personnel expense amounts are not of the same character and are not recognized as having that character in the review of rate applications. It does not correspond to a specific threat of a competitive disadvantage. It is not confidential.

WHEREFORE, Applicant does not provide evidence and argument sufficient to meet its burden under 807 KAR 5:001 Section 7. Accordingly, the Petition should be denied.

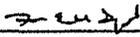
Respectfully submitted,

JACK CONWAY
ATTORNEY GENERAL


David Edward Spenard
Assistant Attorney General
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601-8204
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Notice Regarding Filing and Certificate of Service

Counsel certifies that an original and ten copies of this Response were served and filed by hand delivery to Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601. A copy was served on the Petitioner by United States Mail, first-class, postage-prepaid, to John N. Hughes, 124 West Todd Street, Frankfort, Kentucky 40601. The filing and service took place on 2nd day of March, 2011.



Assistant Attorney General



Steven L. Beshear
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David L. Armstrong
Chairman

James W. Gardner
Vice Chairman

Charles R. Borders
Commissioner

February 2, 2011

FEB - 4 2011

John N. Hughes
124 West Todd Street
Frankfort, Kentucky 40601

Re: Water Service Corporation of Kentucky
Petition for Confidential Treatment received 1/24/11
PSC Reference – Case No. 2010-00476

Dear Mr. Hughes:

The Public Service Commission has received the Petition for Confidential Treatment you filed on January 24, 2011 on behalf of Water Service Corporation of Kentucky, ("WSCK") to protect certain information filed with the Commission as confidential pursuant to Section 7 of 807 KAR 5:001 and KRS 61.870. The information you seek to have treated as confidential is identified as information contained in WSCK's Independent Auditor's Report, Exhibit 11 of its Application. The information is more particularly described as containing detailed financial information regarding WSCK and its parent Utilities, Inc.

Your justification for having the Commission handle this material as confidential is that the public disclosure of the information would compromise WSCK's competitive position in the industry and result in an unfair commercial advantage to its competitors, and also states trade secrets would be compromised.

Based on a review of the information and pursuant to KRS 61.878 and 807 KAR 5:001, Section 7, the Commission has determined that WSCK has failed to demonstrate that the information requested to be made confidential meets the exemptions to the Open Records Act, and therefore fails to meet the criteria for confidential protection. Therefore, the Commission **DENIES** confidential protection for WSCK's Independent Auditor's Report, Exhibit 11 of its Application.

The information denied confidentiality will be withheld from public inspection for 20 days from the date of this letter. If you disagree with the Commission's decision, you may

Mr. Hughes
February 2, 2011
Page 2

seek rehearing with the Commission within 20 days of the date of this letter under the provisions of KRS 278.400

Sincerely,



Jeff DeRouen
Executive Director

kg/

cc: Parties of Record