

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 September 21, 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 treatment for five years for Attachments 1 and 2 provided in response to Lexington-Fayette Urban County Government's (LFUCG) Second Request for Information (LFUCG's Second Request), Item 6; response to Commission Staff's Third Request for Information (Staff's Third Request), Item 43; and response to Attorney General's Second Request for Information (Attorney General's Second Request), Item 10.

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

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

examination of public records contained in KRS 61.878 should be strictly construed.<sup>2</sup> The 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)(a) exempts from disclosure “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”<sup>4</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>5</sup>

The designated material contained in Kentucky-American’s response to LFUCG’s Second Request, Item 6 consists of Kentucky-American’s response to a request for proposal (RFP) issued by Peaks Mill Water District (Peaks Mill District) regarding the acquisition of Peaks Mill District’s water system. In support of its petition, Kentucky-American argued that the designated material contains the amount of the offer to purchase the utility and specifics regarding supplying water to Peaks Mill District. Kentucky-American argued that disclosure would put Kentucky-American at a commercial disadvantage with competitors.

The designated material in Kentucky-American’s response to Staff’s Third Request, Item 43 and the Attorney General’s Second Request, Item 10 consists of non-

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

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

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

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

executive employee compensation information. Kentucky-American argued that disclosure of the non-executive salary information would violate the privacy rights of employees and provide insight into salary determinations. Kentucky-American noted that the Commission previously granted confidential treatment to the same type of non-executive employee compensation information.<sup>6</sup>

Having considered the petition and the material at issue, the Commission finds that the request for confidential treatment should be granted. This is because public disclosure of the designated material contained in Kentucky-American's response to LFUCG's Second Request, Item 6 could put Kentucky-American in a competitive disadvantage in the selection process for Peaks Mill District and allows competitors to receive insight into Kentucky-American's internal planning. The Commission previously granted confidential treatment for bids submitted in response to an RFP for the same reason.<sup>7</sup> Further, public disclosure of the designated material contained in Kentucky-American's response to Staff's Third Request, Item 43 and Attorney General's Second Request, Item 10 could result in the unwarranted invasion of personal privacy of employees. The Commission has previously found that such information should be afforded confidential treatment and disclosure would be a violation of employee's

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<sup>6</sup> Case No. 1989-00374, *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.

<sup>7</sup> See Case No. 2020-00289, *Electronic Request of Atmos Energy Corp. for Modification & Extension of Its Gas Cost Adjustment Performance Based Ratemaking Mechanism*, (Ky. PSC Feb. 7, 2022), Order at 3-4; Case No. 2015-00264, *Application of Louisville Gas & Elec. Co. & Kentucky Utilities Co. Regarding Entrance into Refined Coal Agreements, for Proposed Acct. & Fuel Adjustment Clause Treatment, & for Declaratory Ruling*, (Ky. PSC Jan. 13, 2016), Order at 1-2.

expectation of privacy.<sup>8</sup> Therefore, the designated material meets the criteria for confidential treatment and should be exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, KRS 61.878(1)(c)(1) and KRS 61.878(1)(a).

IT IS THEREFORE ORDERED that:

1. Kentucky-American's petition for confidential treatment is granted.
2. 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.
3. 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).
4. Kentucky-American shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.
5. 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.

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<sup>8</sup> See Case No. 2020-00104, *Elec. Application of Clark Energy Coop., Inc. for A Gen. Adjustment of Rates Pursuant to Streamlined Proc. Pilot Program Established in Case No. 2018-00407* (Ky. PSC Jan. 25, 2022), Order at 3.

6. The Commission shall not make the requested material 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.

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PUBLIC SERVICE COMMISSION

*Mark Cole*

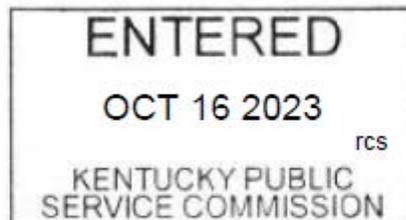
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