

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY-	)	CASE NO.
AMERICAN WATER COMPANY FOR AN	)	2021-00434
ALTERNATIVE RATE ADJUSTMENT	)	

ORDER

This matter is before the Commission on two petitions for confidential treatment filed by Kentucky American Water Company (Kentucky-American). On January 24, 2022, Kentucky-American filed a petition pursuant to 807 KAR 5:001, Section 13, and KRS 61.878 requesting the Commission grant confidential treatment for an indefinite period for information provided in response to Commission Staff's First Request (Staff's First Request), Items 6, 8, and 15 and for information provided in response to the Attorney General's First Request for Information, Items 2 and 16. On February 28, 2022, 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 an indefinite period for information provided in response to the Attorney General's Second Request, Items 23 and 31. These petitions are individually addressed below.

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."¹ Exceptions to the free and open

¹ KRS 61.872(1).

examination of public records contained in KRS 61.878 should be strictly construed.² The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.³ 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.” 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.”

JANUARY 24, 2022 PETITION

In support of its petition, Kentucky-American argued that its responses to Staff’s First Request, Items 6, 8, and 15 and its response to the Attorney General’s First Request, Item 16, should be granted confidential treatment pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(a), because the responses include position-specific information compensation and benefits information for its employees. Kentucky-American argues that in many instances only one individual has the position and if disclosed, the public may be able to determine a specific employee’s compensation. Additionally, Kentucky-American argued that its responses provided to the Attorney General’s First Request, Item 16, included brochures describing benefits offered to Kentucky-American employees, which if disclosed, would grant competitors an unfair advantage over

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

Kentucky-American in the marketplace for employees and should be granted confidential treatment pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

Having considered the petition and the material at issue, the Commission finds that Kentucky-American's petition should be granted, in part, and denied in part. The Commission finds that the designated material contained in Kentucky-American's responses to Staff's First Request, Items 6, 8, and 15 and its response to the Attorney General's First Request, Item 16, should be granted confidential treatment for all non-executive compensation information and the information should be exempted from public disclosure for an indefinite period pursuant to KRS 61.878(1)(a) and 807 KAR 5:001, Section 13. However, the Commission finds that all compensation information related to executive employees, including bonuses to executive officers, should be denied confidential treatment. The Commission has previously found that compensation information for executive employees should not be afforded confidential treatment.⁴

Kentucky-American sought confidential treatment for an accounting policy provided in response to the Attorney General's First Request, Item 2. Kentucky-American argued that the accounting policy is a product of extensive time and money invested by Kentucky-American's parent company, American Water Works Company, Inc. (AWWC);

⁴ The Commission has a long precedent of not granting confidential treatment for executive compensation. See Case No. 2012-00221, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC Sept. 11, 2013); Case No. 2015-00418, *Application of Kentucky-American Water Company for an Adjustment of Rates* (Ky PSC Aug. 31, 2016); Case No. 2020-00350, *Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of One-Year Surcredit* (Ky. PSC Dec. 7, 2021); Case No. 2021-00183, *Electronic Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates; Approval of Depreciation Study; Approval of Tariff Revision; Issuance of a Certificate of Public Convenience and Necessity; and Other Relief* (Ky. PSC Oct. 5, 2021); Case No. 2021-00185, *Electric Application of Delta Natural Gas Company, Inc. for an Adjustment of its Rates and a Certificate of Public Convenience and Necessity* (Ky. PSC Dec. 8, 2021).

thus, it is confidential and proprietary and the disclosure of it would unfairly advantage AWWC's and Kentucky-American's competitors. The Commission grants confidential treatment for an indefinite period to Kentucky-American's response to the Attorney General's First Request, Item 2, pursuant to KRS 61.878(1)(c) and 807 KAR 5:001, Section 13, as accounting policies and manuals are regularly granted confidential treatment.

FEBRUARY 28, 2022 PETITION

On February 28, 2022, 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 information provided in response to the Attorney General's Second Request, Items 23 and 31.

Kentucky-American stated that its response to Item 23 contained copies of its incentive compensation plans and its response to Item 31 contained information regarding its various retirement plans. Kentucky-American argued that the documents provided are the product of extensive time and money invested by AWWC and contain incentive compensation and retirement benefits for Kentucky-American's employees and therefore are confidential and proprietary as disclosure would unfairly advantage AWWC's and Kentucky-American's competitors.

Having considered the petition and the material at issue, the Commission finds that Kentucky-American's petition should be granted, in part, and denied in part. The Commission finds that the designated material Kentucky-American provided in its response to the Attorney General's Second Request, Items 23 and 31 containing non-executive compensation should be granted confidential treatment and the information

should be exempted from public disclosure for an indefinite period pursuant to KRS 61.878(1)(a) and 807 KAR 5:001, Section 13. However, the Commission finds that all compensation information related to executive employees, including bonuses to executive officers, should be denied confidential treatment. The Commission has previously found that compensation information for executive employees should not be afforded confidential treatment.⁵

IT IS THEREFORE ORDERED that:

1. Kentucky-American's January 24, 2022 petition for confidential treatment is granted in part and denied in part.
2. Kentucky-American's petition for confidential treatment for compensation information and documents provided in response to Staff's First Request, Items 6, 8, and 15 and the Attorney General's First Request, Item 16 is denied for executive employees.
3. Kentucky-American's January 24, 2022 petition for confidential treatment for compensation information and documents provided in response to Staff's First Request, Items 6, 8, and 15, and the Attorney General's First Request, Item 16, is granted for non-executive employees for an indefinite period or until further order of this Commission.

⁵ The Commission has a long precedent of not granting confidential treatment for executive compensation. See Case No. 2012-00221, *Application of Kentucky Utilities Company for an Adjustment of its Electric Rates* (Ky. PSC Sept. 11, 2013); Case No. 2015-00418, *Application of Kentucky-American Water Company for an Adjustment of Rates* (Ky PSC Aug. 31, 2016); Case No. 2020-00350, *Electronic Application of Louisville Gas and Electric Company for an Adjustment of its Electric and Gas Rates, a Certificate of Public Convenience and Necessity to Deploy Advanced Metering Infrastructure, Approval of Certain Regulatory and Accounting Treatments, and Establishment of One-Year Surcredit* (Ky. PSC Dec. 7, 2021); Case No. 2021-00183, *Electronic Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates; Approval of Depreciation Study; Approval of Tariff Revision; Issuance of a Certificate of Public Convenience and Necessity; and Other Relief* (Ky. PSC Oct. 5, 2021); Case No. 2021-00185, *Electric Application of Delta Natural Gas Company, Inc. for an Adjustment of its Rates and a Certificate of Public Convenience and Necessity* (Ky. PSC Dec. 8, 2021).

4. Kentucky-American's January 24, 2022 petition for confidential treatment for compensation information and documents provided in response the Attorney General's First Request, Item 2, is granted confidential treatment for an indefinite period or until further order of this Commission

5. Kentucky-American's February 28, 2022 petition for confidential treatment is granted in part and denied in part.

6. Kentucky-American's February 28, 2022 petition for confidential treatment for compensation information and documents provided in response to Staff's First Request, Items 23 and 31, is granted for non-executive employees for an indefinite period or until further order of this Commission.

7. Kentucky-American's February 28, 2022 petition for confidential treatment for compensation information and documents provided in response to Staff's First Request, Items 23 and 31, is denied for executive employees.

8. 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).

9. If the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment, Kentucky-American shall inform the Commission and file with the Commission an unredacted copy of the designated material.

10. 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, shall have 20 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.

11. 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.

12. 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.

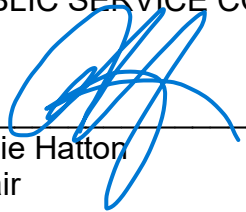
13. If Kentucky-American objects to the Commission's determination that the requested material not be granted confidential treatment, it must seek either rehearing pursuant to KRS 278.400 or judicial review of this Order pursuant to KRS 278.410. Failure to exercise either of these statutory rights will be deemed as agreement with the Commission's determination of which materials shall be granted confidential treatment.

14. 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.

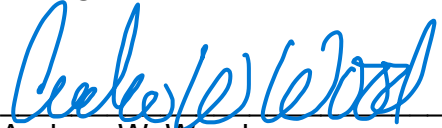
15. The designated material for which Kentucky-American's request for confidential treatment has been denied shall neither be placed in the public record nor made available for inspection for 30 days from the date of service of this Order to allow Kentucky-American to seek a remedy afforded by law.

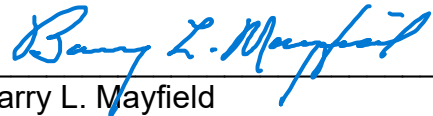
Entered on this 9th day of September, 2026.

PUBLIC SERVICE COMMISSION



Angie Hatton
Chair

Mary Pat Regan
Vice Chair

Andrew W. Wood
Commissioner

Barry L. Mayfield
Commissioner

ATTEST:



Justin McNeil
Executive Director

Case No. 2021-00434

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