

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

Application of Water Service Corporation)
of Kentucky for a General Adjustment)
in Existing Rates) Case No. 2013-00237

**WATER SERVICE CORPORATION OF KENTUCKY’S
THIRD PETITION FOR CONFIDENTIALITY**

Water Service Corporation of Kentucky (“WSCK”) (collectively “Applicants”), pursuant to 807 KAR 5:001, Section 13, respectfully requests the Public Service Commission grant confidential protection to certain information provided in response to the Attorney General’s Initial Request for Information. In support of its motion, WSCK states as follows:

I. Tax records disclosed by WSCK are entitled to confidential treatment pursuant to federal law.

Administrative Regulation 807 KAR 5:001, Section 13, indicates that the Commission shall grant confidential treatment for records that would be exempt from KRS 61.878 of the Kentucky Open Records Act. KRS 61.878(1)(k) exempts from public disclosure “all public records or information the disclosure of which is prohibited by federal law or regulation.” Under 26 U.S.C. § 6103(a), federal law states that tax “[r]eturns and return information shall be confidential.” The statute prohibits a state employee from publically disclosing any federal income tax return or its contents.

WSCK has provided tax returns in response to requests from the Attorney General. See, e.g., WSCK's Response to Item 90 of the Attorney General's Request for Information. Because federal law prohibits disclosure of these documents and the information contained therein, it is entitled to confidential treatment under KRS 61.878(1)(k) and Commission regulations.

II. Certain documents related to Project Phoenix are entitled to confidential treatment because, if disclosed, competitors would receive an unfair commercial advantage.

Administrative Regulation 807 KAR 5:001, Section 13, indicates that the Commission shall grant confidential treatment for records that would be exempt from KRS 61.878 of the Kentucky Open Records Act. KRS 61.878(1)(c)(1) protects records that are "confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would present an unfair commercial advantage to competitors of the entity that disclosed the records." This exception "is aimed at protecting records of private entities which, by virtue of involvement in public affairs, must disclose confidential or proprietary records to a public agency, if disclosure of those records would place the private entities at a competitive disadvantage." Ky. OAG 97-ORD-66 at 10 (Apr. 22, 2008).

The Attorney General and Commission Staff have requested detailed information on how Patrick Baryenbruch reached his conclusions that the costs for Project Phoenix were necessary and an allocated portion thereof are appropriate to be recovered by the customers of WSCK. See Attorney General's Initial Request for Information 34(f); Commission Staff's Second Request for Information No. 19. In response, WSCK is producing several reports, assessments, and evaluations prepared by Deloitte Consulting that Utilities, Inc., ("UI") retained to assist UI in the decision-making process. The documents that are being produced contain internal company information, processes, and other confidential and proprietary information used to determine what upgrades were necessary and the most economically reasonable. The services provided by

Deloitte came at a significant cost to UI. Disclosing these documents to the public would allow WSCK's and UI's competitors to obtain this costly information at no cost, giving them a significant commercial advantage. Moreover, Deloitte has intellectual property rights in the process by which these documents were developed and have an equal interest in maintaining their competitive advantage.

Based on these reasons, confidential treatment should be granted to these documents based on KRS 61.878(1)(c)(1). The Commission has granted confidential treatment for similar documents created by a consultant to Kentucky Utilities and Louisville Gas & Electric Company in the development of their Customer Care System in Case Nos. 2009-00548, 2009-00549. See Letter from Jeff Derouen, Executive Director of the Public Service Commission, to Allyson Sturgeon (Feb. 29, 2012).¹

III. Certain information of a personal nature, such as salary information, must be kept confidential.

Administrative Regulation 807 KAR 5:001, Section 13, indicates that the Commission shall grant confidential treatment for records that would be exempt from KRS 61.878 of the Kentucky Open Records Act. KRS 61.878(1)(a) protects information of a personal nature from being disclosed by a public agency. The Kentucky Court of Appeals has identified an individual's salary as information of a personal nature. See Zink v. Department of Workers' Claims, Labor Cabinet, 902 S.W.2d 825, 828 (Ky. App. 1994) (stating that "information such as ... wage rate ... [is] generally accepted by society as [a] detail [] in which an individual has at least some expectation of privacy.")

¹ This document is available at http://psc.ky.gov/PSCSCF/Post%20Case%20Referenced%20Correspondence/2009%20cases/2009-00549/20120229_PSC_Letter%20to%20Sturgeon.pdf (last visited Nov. 22, 2013).

In Items 43 and 50 of the Attorney General's Initial Request for Information, the Attorney General has requested that WCK provide actual annual salaries for employees and annual salary increases.² Because this information is of a personal nature, it is entitled to confidential treatment under Zink and other relevant law. In fact, the Public Service Commission has made this determination in previous cases with respect to the redaction of names as to their corresponding salaries. See Letter from Jeff DeRouen, Executive Director of the Public Service Commission, to John N. Hughes, counsel for WCK (Apr. 24, 2009)(copy attached). Accordingly, WCK has provided a public version with redactions of its Kentucky staff and Customer Service Representative Staff. WCK is treating this information the same as it did with its first Petition for Confidentiality in this matter. See Petition for Confidentiality, Case No. 2013-00237 (filed Oct. 11, 2013).

As discussed above, the Kentucky Open Records Act protects records that are "confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would present an unfair commercial advantage to competitors of the entity that disclosed the records." KRS 61.878(1)(c)(1). WCK is also seeking confidential treatment of the entire salary information related to its corporate employees, which have not been previously disclosed to the Commission or to the public. In fact, most UI corporate employees do not have access to this information. These salaries must remain confidential because, if they are openly disclosed, business competitors could poach UI employees, leaving UI and WCK at a significant competitive disadvantage. In addition, courts have had that salary information, including raises, "would be of potential benefit to persons or firms in economic competition with" another company. Am.

² Redacted copies of these documents were filed in response to Items 43 and 50 of the Attorney General's Initial Request for Information on December 13, 2013.

Postal Workers Union, AFL-CIO v. U.S. Postal Serv., 742 F. Supp. 2d 76, 81 (D.D.C. 2010).

Therefore, the documents with salary information for UI's corporate headquarters should be granted confidential treatment in their entirety.

Accordingly, WSCK respectfully requests confidential treatment in perpetuity of information mentioned above. Pursuant to 807 KAR 5:001, Section 13(2)(a)(3), WSCK shall provide a copy of the material that identifies by highlighting those portions of the material identified in Section III above that would disclose confidential information and will provide cover pages identifying other materials for which confidential treatment is sought for the entire document.

Respectfully submitted,



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