

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:)
)
APPLICATION OF KENTUCKY-AMERICAN)
WATER COMPANY FOR AN ADJUSTMENT) **CASE NO. 2015-00418**
OF RATES)
)

PETITION FOR CONFIDENTIAL TREATMENT

Kentucky-American Water Company (“Kentucky American Water”) petitions the Kentucky Public Service Commission (“Commission”) pursuant to 807 KAR 5:001, Section 13 and KRS 61.878 to grant confidential protection for the 2016 General Rate Case Total Compensation Study (“Study”) it is providing as an attachment to the direct testimony of Robert V. Mustich in support of its application in this proceeding. In support of this Petition, Kentucky American Water states as follows:

The Kentucky Open Records Act exempts from disclosure certain commercial information. KRS 61.878(1)(c). To qualify for the exemption and, therefore, maintain the confidentiality of the information, a party must establish that the material is of a kind generally recognized to be confidential or proprietary, the disclosure of which would place the party seeking confidentiality at an unfair commercial advantage. The Kentucky Open Records Act likewise exempts from disclosure certain private and personal information. KRS 61.878(1)(a).

In support of its application, Kentucky American Water is submitting the testimony of Robert V. Mustich, from Wills Towers Watson, regarding the reasonableness of Kentucky American Water’s compensation. An attachment to Mr. Mustich’s testimony is a Study he prepared that examines every facet of Kentucky American Water’s (and its parent company

American Water's) compensation philosophy, market positioning, performance programs, and position-specific compensation information for certain Kentucky American Water employees.

Mr. Mustich's Study is based entirely on confidential and proprietary information. With respect to confidentiality, the Study reveals compensation information for a number of Kentucky American Water individuals. Because there is position-specific information (and in many instances only one person has that position), the public would be able to determine the employees' compensation information. The amount of compensation a person receives is generally regarded as confidential information and those employees have a reasonable expectation that such information would not be publicly disseminated. The Kentucky Court of Appeals has stated 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. Zink v. Dept. of Workers' Claims, Labor Cabinet, 902 S.W.2d 825, 828 (Ky. App. 1994). The Commission has previously granted petitions for confidential treatment regarding compensation information in prior Kentucky American Water rate proceedings. See, e.g., In the Matter of: Application of Kentucky American Water Company for an Adjustment of Rates Supported by a Fully Forecasted Test Year (Ky. PSC April 17, 2014).

With respect to the Study containing proprietary information, this concern is two-fold. First, the Study is replete with information regarding Kentucky American Water's compensation targets and market positioning. If competitors were able to access this information, competitors would have an unfair commercial advantage in hiring away current and future Kentucky American Water employees. Second, as mentioned, Willis Towers Watson has assisted Kentucky American Water and American Water in developing and assessing its compensation strategy and philosophy. These analyses, which are reflected in the Study, are the product of the

investment of extensive time and money. Allowing competitors to have access to this Study and the assessments discussed therein would inure a competitive advantage to those competitors, who would benefit from Kentucky American Water's and Willis Towers Watson's work without paying for same. This, of course, would result in a disadvantage to Kentucky American Water's customers that did pay for Willis Towers Watson's work. The Commission has previously found that similar compensation studies merit confidential protection. See, e.g., In the Matter of: Application of Cumberland Valley Electric, Inc. for an Adjustment of Rates (Case No. 2014-00159) (Ky. PSC May 7, 2015).

If the Commission disagrees with this request for confidential protection, however, it must hold an evidentiary hearing (a) to protect the Companies' due process rights and (b) to supply the Commission with a complete record to enable it to reach a decision with regard to this matter. Utility Regulatory Commission v. Kentucky Water Service Company, Inc., 642 S.W.2d 591, 592-94 (Ky. App. 1982).

The information for which Kentucky American Water is seeking confidential treatment pursuant to KRS 61.878(1)(a),(c) is not known outside of the utility, is not disseminated within Kentucky American Water except to those employees with a legitimate business need to know and act upon the information, and is generally recognized as confidential and proprietary information within the utility industry.

Kentucky American Water will disclose the confidential information (pursuant to a confidentiality agreement) to intervenors and others with a legitimate interest in this information and as required by the Commission.

In compliance with 807 KAR 5:001, 13(2)(e), Kentucky American Water is filing with the Commission one paper copy that identifies the information for which confidential protection

is sought and one electronic copy with the same information obscured. Because confidential treatment is sought for the entire Study, written notification that the entire document is confidential has been submitted with the document in lieu of highlighting.

The Companies request that the information be kept confidential for an indefinite period of time because of the highly personally confidential and proprietary nature of the information at issue. This is consistent with the Commission's prior orders for such compensation studies. See, e.g., In the Matter of: Application of Cumberland Valley Electric, Inc. for an Adjustment of Rates (Case No. 2014-00159) (Ky. PSC May 7, 2015).

WHEREFORE, the Companies respectfully request that the Commission grant confidential protection for the information described herein.


Date: January 29, 2016

Respectfully submitted,

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CERTIFICATE

This certifies that Kentucky-American Water Company's electronic filing is a true and accurate copy of the documents to be filed in paper medium with the exception of documents for which confidential treatment is sought; that the electronic filing has been transmitted to the Commission on January 29, 2016; that a paper copy of the filing will be delivered to the Commission within two business days of the electronic filing; and that no party has been excused from participation by electronic means.

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