

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF NORTHERN)
KENTUCKY WATER DISTRICT (A) FOR) Case No. 2018-00291
AN ADJUSTMENT OF RATES;)
(B) ISSUANCE OF BONDS;)
(C) FINANCING; AND (D) TARIFF)
REVISIONS)

PETITION FOR CONFIDENTIALITY

Northern Kentucky Water District (NKWD), by counsel, petitions the Commission pursuant to 807 KAR 5:001, Section 13 and KRS 61.878(1) to grant confidential protection for the items which NKWD is providing in response to the Commission's Third Request for Information. The specific Request for Information for which NKWD seeks confidential protection is Request No.15, which asks for salary and compensation studies. In support of this Petition, NKWD states as follows:

KRS 61.878(1)(a) states:

The following public records are excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction, except that no court shall authorize the inspection by any party of any materials pertaining to civil litigation beyond that which is provided by the Rules of Civil Procedure governing pretrial discovery:

(a) **Public 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) exempts from disclosure:

Records 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.

These provisions are intended to protect from public disclosure information contained in public records that reveals the details of an individual's private life when the individual's privacy interest in the information outweighs the public interest in the information. Board of Education of Fayette County v. Lexington-Fayette Urban County Rights Commission, Ky. App., 625 S.W. 2d 109, 111 (1981).

PSC DR 3-15 requires disclosure of NKWD compensation for employees as well as comparative information about competitors for similar positions. The information provided is based on confidential and proprietary information and/or includes compensation information for NKWD specific job positions. Because there is position-specific information, it is possible to determine individual employee 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, Case No. 2012-00520, (Order of April 17, 2014).

With respect to the Employer Resources Association (ERA) study, it contains confidential information about specific NKWD positions and compensation. The American Water Works Association (AWWA) survey is proprietary and not to be disclosed or transmitted

to third parties without permission. The Northern Kentucky Area Development District salary and compensation survey is purchased and it is generally understood that the purchaser will not forward this information to others without that entity/individual paying the fee as well. If competitors were able to access this information (collectively “studies”), competitors would have an unfair commercial advantage in hiring away current and future NKWD employees. These studies assist NKWD in developing and updating its compensation packages. Competitors having access to this information would have a competitive advantage of knowing compensation levels and underlying information supporting those levels. 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, (Order of May 7, 2015); In the Matter of: Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates for Gas Service, Case No 2013-00167, (Order of October 29, 2013).

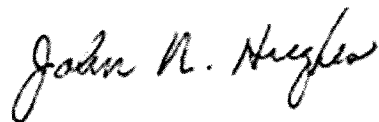
The Kentucky Open Records Act, KRS 61.878(1)(a) exempts from disclosure certain private and personal information. The Kentucky Court of Appeals has stated, “information such as ... wage rate ... [is] generally accepted by society as a detail in which an individual has at least some expectation of privacy.” *Zink v. Department of Workers’ Claims, Labor Cabinet*, 902 S.W.2d 825, 828 (Ky. Ct. App. 1994). Additionally, the Kentucky Supreme Court has characterized “one’s income” as “intimate” information of a private nature. *Cape Pub’ns, Inc. v. Univ. of Louisville Found., Inc.*, 260 S.W.3d 818, 822 (Ky. 2008).

As discussed in the testimony filed in this case, NKWD is experiencing significant competition for skilled labor. Public disclosure of employee compensation would be beneficial to competitors who seek to recruit NKWD’s personnel and would harm NKWD’s ability to

negotiate employee compensation. Public disclosure of this information is likely to result in increased costs and have a negative impact on NKWD's negotiations with potential employees and ultimately result in greater employee compensation demands and higher costs to recruit and retain skilled employees. The Commission should, therefore, give confidential treatment to the information included in response to DR 3-15.

NKWD requests that the information be held confidentially indefinitely. The statutes cited above do not allow for disclosure at any time. Given the competitive employment market in Northern Kentucky and the efforts of non-regulated companies to hire trained, skilled employees, it is imperative that regulated information remain protected.

For these reasons, NKWD requests that the items identified in this petition be treated as confidential in their entirety. Should the Commission determine that some or all the material is not to be given confidential protection, NKWD requests a hearing prior to any public release of the information to preserve its rights to notice of the grounds for the denial and to preserve its right of appeal of the decision.



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