

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 First Request for Information. The specific Request for Information for which NKWD seeks confidential protection is Request No.15. In support of this Petition, NKWD states as follows:

On September 13, 2018, the Commission staff issued its First Set of Data Requests to NKWD. Commission Staff Request No. 15 (DR 1-15) asks NKWD to provide:

15. Provide the most recent vendor invoice for the following employee insurance coverages:
 - a. Health Insurance;
 - b. Dental Insurance; and
 - c. Life Insurance.The invoices should list employees individually by **name** and state the employee number in the response to Item 8.a.(1). that the employee name corresponds to. If the listing identifies employees by a code number, provide the name for each number.

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. 2nd 109, 111 (1981).

PSC DR 1-15 requires disclosure of employee names and employee identification numbers in association with personal information. This request provides for disclosure of each individual employee's insurance information, but when taken in conjunction with DR 1-8, each employee's wage or salary can be determined. DR 1-8 requires NKWD to provide, in part:

8 a. Provide the information requested in Appendix A in Microsoft Excel spreadsheet format with all formulas intact and unprotected and with all columns and rows accessible for **yearly salary** and benefit information for each employee of Northern Kentucky District for the years 2013-2017 (in gross dollars—not hourly or monthly rates).

- (1) **Employee number.**
- (2) Position title.
- (3) **Regular salary or pay.**
- (4) **Overtime Pay.**
- (5) **Excess vacation payout.**
- (6) **Standby/On-Call pay.**

- (7) **Bonus and incentive pay.**
- (8) **Any other forms of incentives (may include stock options or forms of deferred compensation).**
- 9) **Other amounts paid and reported on the employees' W-**

Simply comparing the employee number in DR 1-8 with the employee number and name required of DR 1-15 allows individual wages to be disclosed.

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).

In Case No. 89-374, “The Application of Louisville Gas and Electric Company” Order dated April 30, 1997, the Commission stated that salary information “should be available for customers to determine whether those salaries are reasonable,” but “the right of each individual employee within a job classification to protect such information as private outweighs the public interest in the information.” In the same order, the Commission concluded, “Thus, the salary paid to each individual within a classification is entitled to protection from public disclosure.” More recently, the Commission found similar information to be confidential. “Electronic Application Of Kentucky Power Company For (1) A General Adjustment Of Its Rates For Electric Service” Case No. 2017-00179, Order dated August 23, 2017

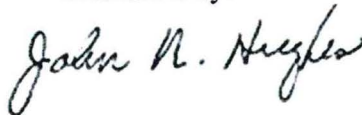
As discussed in the testimony filed in this case, NKWD is experiencing significant competition for skilled labor in the Cincinnati and Northern Kentucky area. Public disclosure of employee compensation would be beneficial to competitors who seek to recruit NKWD’s

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 names associated with the information included in response to DR 1-15.

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 in NKWD's service area 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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