

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**IN THE MATTER OF:**

<b>ELECTRONIC APPLICATION OF</b>	)	
<b>KENTUCKY-AMERICAN WATER</b>	)	<b>CASE NO. 2018-00358</b>
<b>COMPANY FOR AN ADJUSTMENT OF</b>	)	
<b>RATES</b>	)	

**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 items described herein, which Kentucky American Water seeks to provide in response to Items 10, 23, and 71 of the Attorney General’s (“AG”) Initial Data Requests; Items 23, 33, 37, and 47 of the Commission’s Staff’s Second Request for Information, and Item 27 of Lexington-Fayette Urban County Government’s (“LFUCG”) First Requests for Information. In support of this Petition, Kentucky American Water states as follows:

**Confidential or Proprietary Commercial Information (KRS 61.878(1)(c)(1))**

1. The Kentucky Open Records Act exempts from disclosure certain commercial information.<sup>1</sup> 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.

2. LFUCG Item 27 requests Kentucky American Water’s policies and procedures related to fire hydrants. The response to LFUCG Item 27 includes an attachment containing the

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<sup>1</sup> KRS 61.878(1)(c).

fire hydrant maintenance procedures that are the product of extensive time and money invested by Kentucky American Water's parent company, American Water Works Company, Inc. ("American Water"). This attachment contains confidential and proprietary information, the disclosure of which would unfairly advantage American Water and Kentucky American Water's competitors. If those competitors have free access to the same information that American Water expended substantial resources to develop, they will derive an unfair commercial advantage. Because of the proprietary nature of the information at issue, Kentucky American Water requests confidential protection for the entirety of the attachment provided in response to LFUCG Item 27.

3. Commission Staff Item 23 requests support for the 2019 price changes for chemical costs. The attachment provided in response to Commission Staff Item 23 contains confidential chemical information, the disclosure of which would inure Kentucky American Water's ability to negotiate future chemical pricing contracts at advantageous prices and would unfairly advantage Kentucky American Water's competitors. The attachment to Commission Staff Item 23 contains confidential supplier names, material descriptions, and unit prices. If the supplier names and prices are disclosed, Kentucky American Water's competitors would be alerted to low-price suppliers and vendors may be less likely to work with Kentucky American Water. Additionally, publicly disclosing the material descriptions and unit pricing would hinder Kentucky American Water's ability to receive the best proposals and procure the best contract terms in future negotiations for chemicals by providing potential vendors the price ceiling on what Kentucky American Water would be willing to pay for certain materials, which would reduce, if not eliminate, vendors' incentive to provide their most competitive bids. Diminishing Kentucky American Water's ability to receive the best prices would harm both Kentucky

American Water and its customers through increased costs of service. Thus, the Commission should grant confidential protection to the supplier names, material descriptions, and unit prices contained in the attachment provided in response to Commission Staff Item 23.

4. AG Item 23 requests Kentucky American Water's pension and OPEB actuarial reports. In response, Kentucky American Water is providing an Actuarial Valuation Report for American Water's Pension Plan and Retiree Welfare Plan prepared by Willis Towers Watson ("WTW"). The WTW Reports are based entirely on confidential and proprietary information. First, the Reports contain detailed information about Kentucky American Water's Pension Plan and Retiree Welfare Plan. 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, WTW has assisted Kentucky American Water and American Water in developing and assessing its compensation and benefits strategy and philosophy. These analyses, which are reflected in the Reports, are the product of the investment of extensive time and money. Allowing competitors to have access to these Reports and the assessments discussed therein would inure a competitive advantage to those competitors, who would benefit from Kentucky American Water's and WTW's work without paying for same. The Commission has previously found that similar studies merit confidential protection.<sup>2</sup> Because of the proprietary nature of the information at issue, Kentucky American Water requests confidential protection for the entirety of the attachment provided in response to AG Item 23.

5. Commission Item 37 requests certain information about Kentucky American Water's Annual Performance Plan. In response, Kentucky American Water is providing an attachment containing employee levels and the applicable percentage for each level available to

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<sup>2</sup> 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).

be awarded. This information is proprietary because it reflects Kentucky American Water's compensation and benefits strategy. Kentucky American Water has spent significant time and resources developing its Annual Performance Plan and allowing competitors to have access to this information would provide an advantage to those competitors. Because of the proprietary nature of the information at issue, Kentucky American Water requests confidential protection for the entirety of the attachment provided in response to Commission Staff Item 37.

**Confidential Personal Information (KRS 61.878(1)(a))**

6. The Kentucky Open Records Act exempts from disclosure certain private and personal information. Commission Staff Item 33 requests information about Kentucky American Water's Annual Performance Plan and Long-Term Performance Plan and detailed information about employees eligible for those plans. AG item 10 requests information about retirement contributions for Kentucky American Water employees. The responses to these questions identify compensation and other confidential employee information for a number of Kentucky American Water individuals. 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."<sup>3</sup> And the Kentucky Supreme Court has characterized "one's income" as "intimate" information of a private nature.<sup>4</sup> Because the responses contain position-specific information (and in many instances only one person has that position), the public would be able to determine the employees' confidential 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 Commission has previously granted petitions for confidential treatment regarding compensation

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<sup>3</sup> Zink v. Dept. of Workers' Claims, Labor Cabinet, 902 S.W.2d 825, 828 (Ky. App. 1994).

<sup>4</sup> Cape Pub'ns, Inc. v. Univ. of Louisville Found., Inc., 260 S.W.3d 818, 822 (Ky. 2008).

information in prior Kentucky American Water rate proceedings.<sup>5</sup> Kentucky American Water requests confidential protection for employees' personnel number, and the compensation and contributions regarding those employees. Kentucky American Water is not requesting confidential protection for the compensation for its current executives.

**Critical Energy Infrastructure Information (KRS 61.878(1)(m))**

7. KRS 61.878(1)(m)(1) exempts from disclosure public records that have a reasonable likelihood of threatening public safety by exposing a vulnerability, such as infrastructure records that disclose the "location, configuration, or security of critical systems," or "detailed drawings, schematics, maps, or specifications of structural elements, floor plans, and operating, utility, or security systems."

8. AG Item 71 requests Kentucky American Water's most recent Comprehensive Planning Study. Kentucky American Water is providing the Comprehensive Planning Study and seeks confidential protection. Commission Staff Item 47 requests studies addressing Kentucky American Water's water and wastewater infrastructure. In response to Commission Staff Item 47, Kentucky American Water is providing an attachment containing American Water Works Association information and an attachment containing studies and reports commissioned by Kentucky American Water. Kentucky American Water is seeking confidential protection for the second attachment, which contains the studies and reports it commissioned. Kentucky American Water is not seeking confidential protection for the American Water Works Association reports provided in response to Commission Staff Item 47.

9. The confidential attachments to AG Item 71 and Commission Staff Item 47 contain detailed location and schematic data, the disclosure of which could be used to

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<sup>5</sup> 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).

compromise Kentucky American Water's facilities or service. Because the confidential attachments to AG Item 71 and Commission Staff Item 47 contain Critical Energy Infrastructure Information that would threaten public safety if disclosed, the attachments should be protected from public disclosure in their entirety.

**The Confidential Information Subject to this Petition**

10. The information for which Kentucky American Water is seeking confidential treatment pursuant to KRS 61.878 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.

11. 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.

12. 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.<sup>6</sup>

13. In compliance with 807 KAR 5:001, Section 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. Pursuant to 807 KAR 5:001, Section 13(2)(a)(3)(b), confidential treatment is sought for the entire documents produced in response to AG Item 23, AG Item 71, Commission Staff Item 37,

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<sup>6</sup> Utility Regulatory Commission v. Kentucky Water Service Company, Inc., 642 S.W.2d 591, 592-94 (Ky. App. 1982).

Commission Staff Item 47, and LFUCG Item 27. For these documents, written notification that the entire document is confidential has been submitted with the document in lieu of highlighting in accordance with 807 KAR 5:001, Section 13(2)(b).

14. Due to the serious security concerns related to the disclosure of Critical Energy Infrastructure Information and the highly personally confidential and proprietary nature of the information at issue, Kentucky American Water requests that the information remain confidential indefinitely.

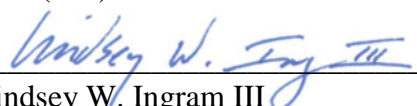
WHEREFORE, the Kentucky-American Water Company respectfully request that the Commission grant confidential protection for the information described herein.

Date: January 25, 2019

Respectfully submitted,

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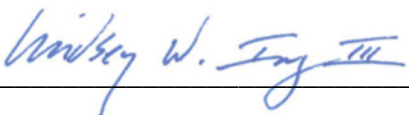
By:

  
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Lindsey W. Ingram III  
Monica H. Braun

**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 25, 2019; 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.

STOLL KEENON OGDEN PLLC

By: 

Attorneys for Kentucky-American Water Company