

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

In the Matter of:

Electronic Application of Water Service)
Corporation of Kentucky for a General) Case No. 2020-00160
Adjustment in Existing Rates)

PETITION FOR CONFIDENTIALITY

Water Service Corporation of Kentucky (“WSCK”), by counsel and pursuant to 807 KAR 5:001, Section 13, respectfully requests the Public Service Commission to grant confidential protection to documents it filed as a part of its Application. Specifically, WSCK seeks confidential treatment for information that is generally considered confidential or proprietary.

Administrative Regulation 807 KAR 5:001, Section 13(2) sets forth the procedure by which certain information filed with the Commission shall be treated as confidential. Specifically, the party seeking confidential treatment must establish “specific grounds pursuant to KRS 61.878 [the Kentucky Open Records Act] for classification of that material as confidential.” 807 KAR 5:001, Section 13(2)(a)(1).

The Kentucky Open Records Act exempts certain records from the requirement of public inspection. *See* KRS 61.878. In particular, 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.

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).

Elicegui Exhibits SME-3, SME-4, and SME-5

Three exhibits sponsored by Shawn Elicegui also warrant confidential protection. Exhibit SME-3 is Comparison of Certain Corporate Salaries to Market Benchmarks. Exhibit SME-4 is an Executive Compensation Survey. Public disclosure of the information would reveal details of WSCK’s internal management strategies as it evaluates and plans its employee compensation structure. This type of information bears upon WSCK’s inner workings, and it is generally recognized as confidential or proprietary. See, e.g., Hoy v. Kentucky Indus. Revitalization Auth., 907 S.W.2d 766, 768 (Ky. 1995) (“It does not take a degree in finance to recognize that such information concerning the inner workings of a corporation is ‘generally recognized as confidential or proprietary.’”)

Disclosure of this information to WSCK’s competitors would grant those competitors an unfair commercial advantage. WSCK and its corporate affiliates have paid to receive a comparison of salaries within its corporate structure to other corporations in the market. The company has obtained underlying information; however, if this information were to be publicly disclosed, WSCK’s competitors would have the financial benefit of receiving this information without the time invested or costs paid by WSCK.

The Commission has previously granted requests for confidentiality for salary surveys and analyses on these grounds. See City of Augusta, Case No. 2015-00039 (Ky. PSC Sept. 22, 2015); Cumberland Valley Electric, Inc., Case No. 2014-00159 (Ky. PSC May 7, 2015); Kentucky-American Water Co., Case No. 2010-00036 (Ky. PSC Staff Letter June 16, 2010)

Kentucky-American Water Co., Case No. 2008-00427 (Ky. PSC Staff Letter Jan. 8, 2009). As such, it should be granted confidential treatment in perpetuity.

Exhibit SME 5 is the Corix Cost Allocation Manual (“CAM”), which has specific details on how the Corix Group of Companies allocates costs to its operating businesses. Recently, the Court of Appeals explained that the exemption identified in KRS 61.878(1)(c)(1) applies to information that is “in the nature of trade secrets, investment strategies, economic status, or business structures. Cabinet for Economic Development v. Courier-Journal, Inc., 2018-CA-001131-ME, 2019 WL 2147510, at *9 (Ky. App. May 17, 2019), review denied (Aug. 21, 2019). Clearly, the Corix CAM has detailed information on its business structure and disclosure of the Corix CAM would allow competitors to review the inner workings of the corporation. See Hoy, 907 S.W.2d at 768. Accordingly, the Corix CAM is entitled to confidential protection in perpetuity.

Allocation of Corporate Costs

As a part of its filing, WSCK is providing certain information regarding the allocation of corporate costs. The filing includes actual costs incurred that, if disclosed, would provide WSCK’s and Corix’s competitors information related to the company’s cost structure and actual SG&A costs. This information certainly contains information regarding the economic status and business structure, for which protection is warranted. See Cabinet for Economic Development, 2019 WL 2147510, at *9. Accordingly, the charts on page 56 of Patrick Baryenbruch’s Exhibit PLB-2 and columns B-K of Exhibit 4 w/p [o] of the Application should be granted confidentiality in perpetuity.

Corix Regulated Utilities’ Audit

Exhibit 11 to the Application is Corix Regulated Utilities (US), Inc.’s consolidated

financial statements. It, too, contains sensitive information related to the company's economic status and business structure that, if disclosed, would allow competitors to review the inner workings of the corporation. See Hoy, 907 S.W.2d at 768.

The Commission has recently acknowledged that a consolidated financial report of a utility's parent company contains information that is "recognized as confidential or proprietary, and therefore meet the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001 , Section 13, and KRS 61 .878(1)(c)(1)." See Navitas KY NG, LLC, Case No. 2019-00430 (Ky. PSC Feb. 17, 2020).

Consistent with the Commission's order in that case, WSCK is publicly filing the cover page and table of contents of the statements. It requests confidential treatment of the other pages of the statements in perpetuity, as they contain sensitive financial information that relate to the company's economic status and business structure.

For the foregoing reasons, WSCK respectfully requests confidential treatment of the aforementioned information for a permanent period of time.

Respectfully submitted,



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