

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF OHIO)
COUNTY WATER DISTRICT FOR AN) CASE NO. 2020-00167
ALTERNATIVE RATE ADJUSTMENT)

**MOTION FOR CONFIDENTIAL PROTECTION AND A DEVIATION
FROM 807 KAR 5:001, SECTION 13(3)(B)**

Pursuant to KRS 61.878(1) and 807 KAR 5:001, Section 13, Ohio County Water District (“Ohio District”) moves for confidential protection for the information that Ohio District provides in response to Question 1e of Commission Staff’s First Request for Information. It further moves for a deviation from 807 KAR 5:001, Section 13(3)(b) to be relieve of any obligation to file a copy of the information in paper medium once the current state of emergency has terminated.¹ In support of its Motion, Ohio District states:

1. Under the Kentucky Open Records Act, the Commission is entitled to withhold from public disclosure public records containing information of a personal nature where such disclosure would constitute a clearly unwarranted invasion of personal privacy. KRS 61.878(1)(a). Public disclosure of the information submitted in response to Question 1e of Commission Staff’s First Request for Information requires such a result for the reasons set forth below
2. In Question 1e of its First Request for Information, Commission Staff requests Ohio District’s monthly billing registers for the calendar year 2018. These registers contain the names,

¹ By its Order of March 16, 2020 in Case No. 2020-00085, the Commission suspended the filing of paper documents during the state of emergency declared in Executive Order 2020-215 and required all documents to be filed electronically. It has ordered all parties to file a paper version of any electronically filed document within 30 days of the end of the state of emergency. Ohio District requests relief from that requirement as it pertains to its response to Question 1-e.

addresses, water usage, account numbers and payment history of Ohio District's customers. The registers consist of approximately 5,276 pages.

3. When determining whether the public disclosure of information constitutes a clearly unwarranted invasion of personal privacy prohibited by KRS 61.878, the Commission must determine "whether the subject information is of a 'personal nature.'" *Zink v. Dep't of Workers' Claims, Labor Cabinet*, Ky. App., 902 S.W.2d 825, 828 (1994). If it so finds, the Commission "must then determine whether public disclosure 'would constitute a clearly unwarranted invasion of personal privacy.'" *Id.*

a. Kentucky courts have recognized that information such as "marital status, number of dependents, wage rate, social security number, home address and telephone number" are "generally accepted by society as details in which an individual has at least some expectation of privacy" even if that information is "contained in other public documents which are made available for public inspection" and in sources that are "often publicly available through sources such as telephone directories or voter registration lists." *Id.* Such personal information "is no less private simply because that information is available someplace." Thus information "of a personal nature" is not confined to such highly confidential information such as a social security number or financial account number.

b. Whether a public disclosure is an unwarranted invasion of privacy requires a determination that the public interest in disclosure outweighs the personal privacy interest.

Disclosure must foster a public purpose. The Kentucky Court of Appeals in *Zink* explained:

[T]he only relevant public interest in disclosure to be considered is the extent to which disclosure would serve the principal purpose of the Open Records Act. . . . As stated in *Board of Examiners, supra*, "the public's 'right to know' under the Open Records Act is premised upon the public's right to expect its agencies properly to execute their statutory functions. In general, inspection of records may reveal whether the public servants are indeed serving the

public, and the policy of disclosure provides impetus for an agency steadfastly to pursue the public good.” At its most basic level, the purpose of disclosure focuses on the citizens' right to be informed as to what their government is doing. That purpose is not fostered, however, by disclosure of information about private citizens that is accumulated in various government files that reveals little or nothing about an agency's own conduct.

Id. at 828-29.

4. Ohio District’s billing registers contains information regarding each customer’s account number, usage habits, and payment history. This information touches upon the personal features of private lives and can be used to infer a particular life style of a residential customer and may suggest the competitive position of a commercial or industrial customer. Most customers have an expectation that this information will be kept private and not made accessible to the public. Furthermore, public disclosure of the billing registers advances no public purpose. While Ohio District acknowledges that Commission Staff may find the information useful to verify Ohio District’s application for rate adjustment, this information is of little use to the public to meaningfully gauge Ohio District’s conduct or performance.

5. The Attorney General of Kentucky has previously affirmed denials of requests for disclosure of utility customer billing information, finding the release of billing information which identifies individual users and their individual water and sewer usage is “simply too invasive” and would not subject the public agency’s action to public scrutiny in any meaningful way. 1996 Ky.AG LEXIS 46, Ky. AG Opinion 96-ORD-176 (Aug. 20, 1996).² Similarly, the Commission

² *But see* 16-ORD-062 (Mar. 31, 2016) (requiring the release of billing records in which the bill contains aggregated information for multiple unidentified users); 96-ORD-237 (Nov. 11, 1996) (requiring release of an industrial customer’s billing records since those records would enable public to determine if terms of rate agreement are being enforced).

has on several occasions found that individual customer information should be afforded confidential protection.³

6. Given the size of the response to Question 1-e, redaction of portions of the confidential information is not feasible and therefore confidential protection of the entire response is sought. Therefore, pursuant to 807 KAR 5:001, Section 13(2)(a)3b, the confidential portions of the document submitted with this Motion are not marked or highlighted.

7. The document should be afforded confidential protection for an indefinite period of time.

8. If the Commission disagrees with this request for confidential protection, it must hold an evidentiary hearing (a) to protect Ohio District's 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.*, Ky. App., 642 S.W.2d 591, 592-94 (1982).

9. 807 KAR 5:001, Section 13(3)(b) requires that a copy of the material for which confidential treatment is sought be filed in paper medium. Because of the document's size and because the document is being filed in electronic format,⁴ Ohio District requests that it be relieved of the requirement to file a paper version of the response, or in the alternative, be permitted to file an electronic storage drive containing an electronic version of the document.

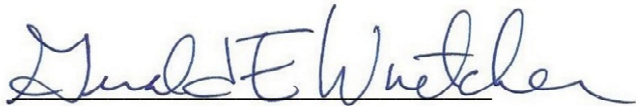
³ See, e.g., *Electronic Application of Kentucky Power Company to Amend the Settlement Agreement Approved In Case No. 2018-00035 to Provide for the One-Time Amortization of Unprotected Accumulated Deferred Federal Income Tax In an Amount Sufficient to Eliminate Customer Delinquencies Greater Than 30 Days as of May 28, 2020*, Case No. 2020-00176 (Ky. PSC July 14, 2020); *The Application Of Kentucky-American Water Company For A Certificate of Public Convenience and Necessity Authorizing the Construction of Kentucky River Station II, Associated Facilities and Transmission Main*, Case No. 2007-00134 (Ky. PSC Oct. 29, 2007)

⁴ Pursuant to the Commission's Order of March 24, 2020 in Case No. 2020-00085, Ohio District is providing the Commission an electronic copy of the material in question through a file sharing site. It has provided the Commission with the requisite information to retrieve an electronic copy of the material.

WHEREFORE, Ohio County Water District requests that the Commission enter an Order affording confidential protection to its response to Question 1-e of Commission Staff's First Request for Information and a deviation from 807 KAR 5:001, Section 13(3)(b) to be relieve of the obligation to file a copy of that response in paper medium.

Dated: July 27, 2020

Respectfully submitted,

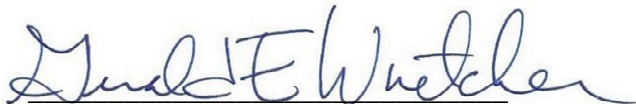


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CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that Ohio County Water District's electronic filing of this Motion is a true and accurate copy of the same document being filed in paper medium; that the electronic filing was transmitted to the Public Service Commission on July 27, 2020; that there are currently no parties that the Public Service Commission has excused from participation by electronic means in this proceeding; and that that within 30 days following the termination of the state of emergency declared in Executive Order 2020-215, this Motion in paper medium will be delivered to the Public Service Commission.



Gerald E. Wuetcher