

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:)
)
APPLICATION OF KENTUCKY-AMERICAN)
WATER COMPANY FOR AN ADJUSTMENT) **CASE NO. 2021-00434**
OF ITS WASTEWATER RATES PURSUANT)
TO 807 KAR 5:076)

PETITION FOR CONFIDENTIAL TREATMENT

Kentucky-American Water Company (“KAW”) petitions the Kentucky Public Service Commission (“Commission”) pursuant to 807 KAR 5:001, Section 13 and KRS 61.878 to grant confidential protection for Nos. 6, 8, and 15 of KAW’s responses to Commission Staff’s First Request for Information and Nos. 2 and 16 of KAW’s responses to the Attorney General’s First Request for Information. In support of this Petition, Kentucky American Water states as follows:

1. The Kentucky Open Records Act exempts from disclosure certain commercial information. KRS 61.878(1)(c). 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. Commission Staff Data Requests Nos. 6, 8, and 15 and Attorney General Data Request No. 16 seek information related to the compensation and benefits paid to KAW employees. Because there is position-specific information (and in many instances only one person has that position), the public would be able to determine the employees’ compensation and benefits 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 KAW 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). Additionally, the response to AG 1-16 also includes brochures describing benefits offered to KAW employees. If KAW’s competitors obtain that information, they will derive an unfair advantage over KAW in the marketplace for employees. Thus, those brochures should be afforded confidential treatment.

3. Attorney General Data Request No. 2 seeks an accounting policy that is product of extensive time and money invested by KAW’s parent company, American Water Works Company, Inc. (“AWWC”). Thus, it is confidential and proprietary and the disclosure of it would unfairly advantage AWWC’s and KAW’s competitors. If those competitors have free access to the same information that AWWC expended substantial resources to develop, they will derive an unfair commercial advantage. In a prior KAW rate proceeding (Case No. 2015-00418), the Commission granted confidential protection to AWCC internal accounting manuals on the same basis requested herein.¹

4. If the Commission disagrees with this request for confidential protection, it must hold an evidentiary hearing (a) to protect KAW’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.

¹ Case No. 2015-00418, August 26, 2016 Order, p. 4.

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

5. 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 KAW 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.

6. KAW 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.

7. KAW is submitting the confidential information to the Commission in a confidential manner via e-mail to the Commission's Executive Director.

8. Given the nature of the confidential information, KAW requests that the information be kept confidential for an indefinite period of time.

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

Date: January 24, 2022

Respectfully submitted,

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CERTIFICATE

This is to certify that Kentucky American Water's January 24, 2022 electronic filing is a true and accurate copy of the original documents in paper medium except that the confidential documents will not be electronically filed publicly; that the electronic filing was transmitted to the Commission on January 24, 2022; and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.



Counsel for Kentucky American Water