

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 (“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 federal and state income tax returns it is providing with its application in this proceeding. 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. As part of its application, Kentucky American Water is required to submit its 2020 federal and state income tax returns. These returns contain proprietary information that is subject to protection from disclosure pursuant to Kentucky law, KRS 61.878(1)(c). The Commission previously afforded confidential protection to Kentucky American Water’s federal and state income tax returns in its last wastewater rate case.¹

¹ Case No. 2014-00390, *In the Matter of: Application of Kentucky-American Water Company for an Adjustment of its Wastewater Rates* (Ky. PSC Order, February 9, 2015).

3. KRS 61.878(1)(k) exempts from public disclosure “[a]ll public records or information the disclosure of which is prohibited by federal law or regulation.” Federal law codified in 26 U.S.C. § 6103(a)(2), (b)(2)(A) prohibits state officials from publicly disclosing any federal income tax return or its contents, therefore making the requested federal income tax return exempt.

Returns and return information shall be confidential, and except as authorized by this title ... no officer or employee of any State . . . shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section

The term "return information" means a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments...

4. The state income tax returns are likewise confidential and protected from disclosure pursuant to KRS 61.878(1)(l), which exempts “...public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly.” KRS 131.190(1)(a) states that “[n]o present or former commissioner or employee of the Department of Revenue...or any other person, shall intentionally and without authorization inspect or divulge any information acquired by him of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed...”

5. If the Commission disagrees with this request for confidential protection, however, it must hold an evidentiary hearing (a) to protect Kentucky American Water’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., 642 S.W.2d 591, 592-94 (Ky. App. 1982).

6. The information for which Kentucky American Water is seeking confidential treatment pursuant to KRS 61.878(1)(c),(k),(l) 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.

7. 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.

8. Kentucky American Water is submitting the tax returns to the Commission in a confidential manner via e-mail to the Commission's Executive Director. The tax returns are confidential in their entirety.

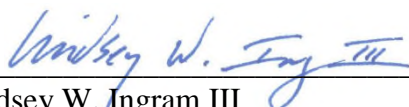
9. Kentucky American Water requests that the information be kept confidential for an indefinite period of time because the requisite statutes do not allow for disclosure at any time because of the highly confidential and proprietary nature of the information at issue.

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

Date: December 1, 2021

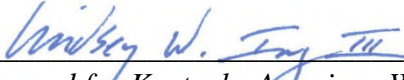
Respectfully submitted,

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CERTIFICATE

This is to certify that Kentucky American Water's December 1, 2021 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 December 1, 2021; 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