

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. 2022-00147
Adjustment in Existing Rates and a Certificate)
of Public Convenience and Necessity to Deploy)
Advanced Metering Infrastructure and Approval)
Of Certain Regulatory Accounting Treatment)

PETITION FOR CONFIDENTIAL TREATMENT

Water Service Corporation of Kentucky (“WSCK”), by counsel, moves the Public Service Commission of Kentucky (the “Commission”) for an order granting confidential treatment of certain information and documents filed in response to the initial requests for information. Specifically, Liberty requests confidential treatment for information or documents related to Items 16, 36, 47, and 49 of the Commission Staff’s First Request for Information. In support of its motion, WSCK states as follows:

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.”

The Kentucky Open Records Act exempts certain records from the requirement of public inspection. *See* KRS 61.878. KRS 61.878(1)(a) exempts from disclosure “public records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” This exception is intended to protect privacy,

which Kentucky courts have held as a “basic right of the sovereign people.” *See Bd. of Ed. of Fayette Cty. v. Lexington-Fayette Urb. Cty. Hum. Rts. Comm’n*, 625 S.W.2d 109, 110 (Ky. Ct. App. 1981). The test the Kentucky Supreme Court has adopted to determine if information is exempt from disclosure, pursuant to KRS 61.878(1)(a), requires that the information be “of a personal nature” and that, upon “weighing the interest of the person involved against the public’s interest in disclosure,” the disclosure would constitute an invasion of privacy. *Cape Publications, Inc. v. Univ. of Louisville Found., Inc.*, 260 S.W.3d 818, 821 (Ky. 2008) (citing *Kentucky Bd. Of Exam’rs of Psychologists v. Courier-Journal*, 826 S.W.2d 324, 327-28 (Ky. 1992)).

The information in Items 36, 47 and 49¹ contain salary and personal identifying information about WSCK employees, and disclosure thereof would constitute an invasion of privacy. The public interest for disclosure does not outweigh the legitimate privacy interests of the employees. Item 36 seeks employee salary and wage increase information; and Items 47 and 49 seek a copy of WSCK’s wage study and corresponding workpapers. The wage study was previously submitted in conjunction with a Petition for Confidential Treatment with WSCK’s Application. These documents reveal compensation information for many WSCK employees. The information contained in these documents are position specific as often only one employee retains a particular title, so the public would be able to discern the employee’s compensation information based on either the employee’s name or title.

The Kentucky Court of Appeals has identified an individual’s salary as information of a personal nature. *See Zink v. Department of Workers’ Claims, Labor Cabinet*, 902 S.W.2d 825, 828 (Ky. App. 1994) (stating 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.”) The

¹ Specifically, this applies to the file “PSC DR 1-49 Exhibit 18-32-29 - Schedule B - S&W-PR Taxes-Benefits.”

Commission has also held that “personally identifiable information for . . . non-executive employees” would constitute a disclosure of personal nature and would invade employees’ personal privacy.² The names and titles of the WCK non-executive employees are personal information and should not be disclosed along with salary information. WCK employee titles are identifying information, and the use of an employee’s title in relation to the employee’s salary information could easily identify that employee publicly. Therefore, WCK requests confidential treatment in perpetuity of employee name and title in relation to salary information provided in Items 36, 47, and 49. The Commission has previously held that this type of information should be granted confidential treatment.³

Additionally, the workpapers for the Wage Benefit Study, which are responsive to Items 47 and 49, correspond to the study that was tendered to the Commission under confidential seal with the WCK Application. The previously filed study and associated workpapers contain proprietary information. Competitors, if able to access this information, would gain valuable insight into WCK compensation and employee structure. This would result in a distinct competitive advantage for other utilities at the expense of WCK’s time and monetary resources spent generating the study. This proprietary information directly meets the criteria of the exception to disclosure in a public setting pursuant to KRS 61.878(1)(c)(1), and the Commission has previously held so.⁴

WCK seeks confidential treatment of its federal and state income tax returns and its Cost Allocation Manual (“CAM”) sought in Items 16 and 49 respectively. KRS 61.878(1)(c)(1)

² *Application of Kentucky-American Water Company for an Adjustment of Rates Supported by a Fully Forecasted Test Year*, Case No. 2012-00520 at 4 (Ky. PSC April 17, 2014); *Electronic Application of Grayson County Water District for a Rate Adjustment Pursuant to 807 KAR 5:076*, No. 2021-00191, at 2 (Ky. PSC June 3, 2022).

³ *Application of Water Service Corp. of Kentucky*, Case No. 2020-00160 (Ky. PSC Dec. 22, 2020).

⁴ *Electronic Application of Kenergy Corp. for A General Adjustment of Rates Pursuant to Streamlined Procedure Pilot Program Established in Case No. 2018-00407*, No. 2021-00066 at 1 (Ky. PSC June 10, 2022) (holding that salary and wage studies should be held confidential).

exempts records that are confidential or proprietary from disclosure if that disclosure would competitively disadvantage the corporate entity. *See* Ky. OAG 97-ORD-66 at 10 (Apr. 17, 1997). Similar to the Wage Benefit Study and related workpapers discussed above, the preparation of WSCK's tax records and CAM required a significant outlay of WSCK's time and financial resources, and disclosure thereof would unfairly benefit its competitors. Specifically, revelation of the information contained in these documents would reveal the nature of WSCK's business operations to a degree that otherwise would not be disclosed publicly.

The information contained in Item 49's confidential files supporting the CAM allocation forecasts contain highly sensitive information related to WSCK's affiliates. This information does not solely impact WSCK, but also its sister companies within the Corix corporate organization. It contains detailed forecasts that, if publicly disclosed, would allow competitive advantage to others by revealing "the inner workings of a corporation," which has been recognized by the Kentucky Supreme Court to be subject to the exemption found in KRS 61.878(1)(c)(1).⁵

In addition, the information responsive to Item 16 contains specific information derived from the Company's 2020 federal tax returns. Tax related documents and information merit confidential protection. KRS 61.878(1)(k) exempts from disclosure "[a]ll public records or information the disclosure of which is prohibited by federal law or regulation." Under federal law, state officials are prohibited from publicly disclosing any federal income tax return or its contents. *See* 26 U.S.C. § 6103(a). Similarly, KRS 131 .190(1) similarly prohibits state officials from publicly disclosing a federal tax return or its contents. Accordingly, these tax returns and their content fall within the KRS 61.878(1)(k) exemption from public disclosure. The Commission has previously granted confidential treatment for tax-related information.⁶

⁵ *Hoy v. Kentucky Indus. Revitalization Auth.*, 907 S.W.2d 766, 768 (Ky. 1995),

⁶ *Application of Kentucky Power Co.*, Case No. 2017-00179 (Ky. PSC Oct. 3, 2017).

Additional information provided in response to Item 49⁷ contain personally identifying information about WSKC customers including addresses and account numbers. Public Service Commission regulations suggest that certain information such as home addresses, phone numbers, and email addresses of non-parties may be redacted. 807 KAR 5:001, Section 4(10). In addition, this type of information falls under KRS 61.878(1)(a), which exempts from disclosure “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” Accordingly, WSKC has redacted this personal information from the public version, and requests confidential treatment of the unredacted version of these files.

WHEREFORE, WSKC respectfully requests that the Commission grant confidential treatment for confidential documents produced in response to Items 16, 36, 47, and 49. WSKC request that the information be kept confidential in perpetuity due to the highly personal and proprietary nature of the information contained therein.

RESPECTFULLY SUBMITTED,

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⁷ This refers to the following files: “PSC DR 1-49 Exhibit 29 - Schedule A - Revenue Build - AS FILED REVISED” and “PSC DR 1-49 - Exhibit 41 AMI cost impacts.”