

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, WSCK requests confidential treatment for information or documents related to Items 9 and 19 of the Commission Staff’s Second Request for Information and Items 1, 3, 52, 65, and 83 of the Attorney General’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. WSCK relies on three different provisions in KRS 61.878 to support

of a Commission finding that certain documents or information should be maintained as confidential.

First, 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. 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)).

Second, 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. 17, 1997). In *Marina Management Services, Inc. v. Cabinet for Tourism*, 906 S.W.2d 318 (Ky. 1995), the Supreme Court held that a state agency properly withheld proprietary information when disclosure of certain information would provide an unfair advantage to

competitors by allowing them to ascertain the economic status of private companies “without the hurdles systematically associated with acquisition of such information about privately owned organizations.” *Id.* at 319.

Third, KRS 61.878(1)(m)(1)(f) exempts from disclosure “records the disclosure of which would have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act and limited to . . . (f) [i]nfrastructure records . . . [that] disclos[e] of the location, configuration, or security of critical systems, including public utility critical systems.” This specifically includes water and communication systems.

In **AG 1-1(f)**, the Attorney General requested “an organizational chart of the overall Corix Group of Companies.” It is important to recognize that has requested an organization chart of an unregulated entity with unregulated affiliates. Corix Infrastructure Inc. maintains its detailed organizational chart confidentially and has never publicly disclosed it. Public disclosure of Corix Infrastructure Inc.’s corporate organization chart would release sensitive, proprietary information into the competitive sphere that would work a commercial disadvantage against the company. Specifically, disclosure of this detailed organization chart would provide Corix Infrastructure Inc.’s competitors specific information regarding its corporate structure. This information would further provide a glimpse into the internal workings of Algonquin—again, an unregulated corporation— and the organizational best practices to be gleaned from its structure and hierarchy.

This type of private corporate information has been deemed to be afforded confidential treatment by courts. For example, in *Hoy v. Kentucky Indus. Revitalization Auth.*, 907 S.W.2d 766, 768 (Ky. 1995), the Kentucky Supreme Court held that certain documents “concerning the inner

workings of a corporation is ‘generally recognized as confidential or proprietary’” and, thus, subject to the exemption found in KRS 61.878(1)(c)(1).

Similarly, Commission precedent instructs that the requested information is sensitive and proprietary, and it is not subject to public disclosure. For example, in *Columbia Gas of Kentucky, Inc.*, Case No. 2021-00183, 2021 WL 4657674 (Oct. 4, 2021), the Commission agreed that a corporate organizational chart was entitled to confidential treatment. More recently, the Commission agreed to confidential treatment of Algonquin Power & Utilities Corp.’s organizational chart with the exception of parts of the corporate organization (i.e., Liberty Utilities Finance GP1) that was involved in the involved in the proposed acquisition of a Commission-regulated utility. *See Joint Application of American Electric Company, Inc., Kentucky Power Company, and Liberty Utilities*, Case No. 20121-00481 at 3 (Ky. PSC May 13, 2022).

Consistent with the Commission’s ruling in Case No. 2022-00481, WSCK is requesting confidential treatment of Corix Infrastructure Inc.’s organization chart as it relates to its unregulated operations (as shown on page 1 of the attachment), but not the portion of the organization chart that shows the corporate parentage of WSCK to Corix Infrastructure Inc. (as shown on page 2 of the attachment). Because disclosure of Corix Infrastructure Inc.’s complete organizational chart would reveal the inner workings of Corix Infrastructure Inc., it is exempt from disclosure under KRS 61.878(1)(c)(1), and therefore, the Commission should afford confidential treatment to it.

In **PSC 2-9(a) and (b)**, the Commission Staff requested annual salary comparisons for specific employees. In response, WSCK is providing the requested information that contains names and titles of employees, as well as their salaries. In **AG 1-3(e)**, the Attorney General

requests “vehicle allowances given to the salaried employees.” Any vehicle allowance is a form of compensation, similar to salaries and, thus, deserves similar treatment.

The 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). In addition, if competitors were able to access this information, competitors would have an unfair commercial advantage in hiring away current and future WSCK employees. The Commission has previously granted petitions for confidential treatment regarding compensation information in prior rate proceedings. *See, e.g., Kentucky American Water Company*, Case No. 2012-00520 (Ky. PSC April 17, 2014).

Consistent with prior Commission cases, WSCK seeks confidential treatment of the employees’ names and titles from the schedules of salary increases and vehicle allowances. Confidential treatment of the position titles is necessary because there are circumstances in which there is only one individual with a specific title. WSCK is publicly disclosing the amount of the salaries and vehicle allowances. Because disclosure of the names and titles with this personal information is deemed to be exempt under both KRS 61.878(1)(a) and (c), the Commission should afford confidential treatment to WSCK’s responsive documents to PSC 2-9 and AG 1-3(e).

In **PSC 2-19(e)**, the Commission Staff requested proposals submitted in response to a solicitation related to AMI meters. WSCK is producing three proposals that it received with the understanding that they be maintained confidentially. These proposals contain commercially sensitive information that, if publicly disclosed, would certainly provide competitive advantages to the vendor’s interests. If disclosed, competitors could determine intimate details of other vendor’s business practices and costs. The Commission has previously granted confidential

treatment to responses related to a solicitation for AMI metering. *See Meade Cnty. Rural Electric Cooperative Corp.*, Case No. 2020-00336, 2021 WL 673505, at *1 (Feb. 17, 2021). Accordingly, the Commission should afford confidential treatment to these proposals.

Similarly, in **AG 1-52**, the Attorney General requested information regarding due diligence conducted related to the proposed AMI metering system. As stated in the narrative response, a third-party vendor—Neptune—conducted a propagation study that determined the best application for WSCK’s service areas. The results of the propagation study are exempt from public disclosure for two reasons.

First, the study was prepared by an unregulated third-party vendor. The information in the study is commercially sensitive and can be used by Neptune’s competitors to determine its process for compatibility. As such, it is exempt from public disclosure under KRS 61.878(1)(c). Second, the propagation study reveals the location of utility-related infrastructure, which is exempt under KRS 61.878(1)(m)(1)(f). Accordingly, the Commission should afford confidential treatment to this response.

In **PSC 2-9(e)** and **AG 1-65**, the Commission Staff and Attorney General request a copies of incentive compensation plans. Commission Staff also requested specific information regarding the metrics of the incentive plans. The information relating to employee compensation plans is confidential and proprietary in nature. Individually, any of these documents would provide competitors with tremendous insight into WSCK’s and Corix’s compensation philosophies, policies and practices. These documents reflect Corix’s human capital management. Gaining access to this information would be extremely valuable to WSCK’s and Corix’s competitors who might desire to recruit from their talent pool. Moreover, it would impose a significant and material

obstacle to the Company's efforts to continue to recruit and retain a skilled labor force. As such, it is exempt from disclosure under KRS 61.878(1)(c).

The Commission has previously granted confidential treatment to this type of information. For example, in Case No. 2018-00261, Duke Energy requested confidential treatment for employee and executive compensation plans. *See Petition for Confidential Treatment*, Case No. 2018-00261 (filed August 31, 2018). The Commission granted that motion by Order dated February 1, 2021. The Commission made a similar finding that incentive compensation plans were confidential in *Columbia Gas of Kentucky, Inc.*, Case No. 2021-00183, 2021 WL 4657674, at *2 (Ky. PSC Oct. 4, 2021). Accordingly, the Commission should provide similar confidential treatment to the incentive plans filed by WSCK in response to PSC 2-9(e) and AG 1-65.

In **AG 1-83(b)**, the Attorney General requests information related to how Corix calculated percentage allocations to each affiliate. This underlying data is related to Corix's Cost Allocation Manual ("CAM"), which has been publicly provided as an attachment to Shawn Elicegui's testimony. But the underlying data provides substantially more details that 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." Moreover, the information contained in the documents being produced in response to AG 1-83(b) are the result of a significant outlay of Corix'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 Corix's business operations to a degree that otherwise would not be disclosed publicly. As such, these materials are exempt

from disclosure under KRS 61.878(1)(c)(1), and the Commission should afford confidential treatment for them.

WHEREFORE, WSCK respectfully requests that the Commission grant confidential treatment for the aforementioned documents and information. WSCK 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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