

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 certain requests for information. Specifically, WSCK requests confidential treatment for information or documents related to Items 3 and 8 of the Commission Staff’s Third 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 two 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.

In **PSC 3-3**, 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. This is similar to the information produced in response to PSC 2-9, for which WSCK requested confidential treatment by motion filed on July 28, 2022.

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 benefits. 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 the names and titles identified in WSCK’s responsive document filed in response to PSC 3-3.

In PSC 3-8, the Commission Staff requested itemized schedules and evaluation of proposals submitted in response to a solicitation related to AMI meters. WSCK is producing this detailed information to supplement the information produced in response to PSC 2-19, for which WSCK requested confidential treatment by motion filed on July 28, 2022. 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. Disclosure would also shed light on WSCK's evaluation criteria, which could provide a competitive advantage to vendors in future business deadlines. 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 the information related to these proposals.

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,
STURGILL, TURNER, BARKER & MOLONEY, PLLC



James W. Gardner
M. Todd Osterloh
Rebecca C. Price
333 West Vine Street, Suite 1500
Lexington, KY 40507
Phone: (859) 255-8581
E-mail: jgardner@sturgillturner.com
E-mail: tosterloh@sturgillturner.com
E-mail: rprice@sturgillturner.com

Counsel for Water Service Corporation of Kentucky

