

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

<b>ELECTRONIC APPLICATION OF</b>	)	
<b>MOUNTAIN WATER DISTRICT FOR A</b>	)	<b>CASE NO. 2022-00366</b>
<b>GENERAL ADJUSTMENT OF WATER</b>	)	
<b>RATES</b>	)	

**MOTION FOR CONFIDENTIAL TREATMENT**

Pursuant to 807 KAR 5:001, Section 13, Mountain Water District (“Mountain District”) moves for confidential treatment of the confidential personal information contained in Attachment PH-1 of its Response to Commission Staff’s Post-Hearing Requests for Information.

In support of its Motion, Mountain District states:

1. As part of its response to Commission Staff’s Post-Hearing Requests for Information, Mountain District has provided Attachment PH-1, which contains an unredacted invoice for its employees’ health and dental insurance for the month of June 2023.

2. The invoice reveals the individual health and dental insurance coverages for each Mountain District employee. Mountain District seeks to redact the name of the employee associated the coverage information shown on invoice. All other information on the invoice remains available for public review but is not readily associated with any specific employee.

3. The Kentucky Open Records Act exempts from disclosure certain private and personal information.<sup>1</sup> The Kentucky Court of Appeals has stated, “information such as marital status, number of dependents, wage rate, social security number, home address and telephone number are generally accepted by society as details in which an individual has at least some

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<sup>1</sup> KRS 61.878(1)(a).

expectation of privacy.”<sup>2</sup> The information shown on invoice reveals each employee’s health insurance plan subscriber number,<sup>3</sup> as well as information about the employee’s marital status and number of dependents. This information, which Mountain District does not otherwise publicly report, is personal and private information that should not be in the public realm. Mountain District’s employees, therefore, have a reasonable expectation that Mountain District will maintain the confidentiality of this information, the disclosure of which would constitute an unwarranted invasion of personal privacy in contravention of KRS 61.878(1)(a).

4. Providing confidential protection for the names of Mountain District’s employees would fully accord with the purpose of the Act, which is to make government and its actions open to public scrutiny. Concerning the rationale for the Act, the Kentucky Court of Appeals has stated:

[T]he public’s ‘right to know’ under the Open Records Act is premised upon the public’s right to expect its agencies properly to execute their statutory functions. In general, inspection of records may reveal whether the public servants are indeed serving the public, and the policy of disclosure provides impetus for an agency steadfastly to pursue the public good. At its most basic level, the purpose of disclosure focuses on the citizens’ right to be informed as to what their government is doing.<sup>4</sup>

Citing the Court of Appeals, the Kentucky Office of the Attorney General (“AG”) stated in an Open Records Decision (“ORD”), “If disclosure of the requested record would not advance the underlying purpose of the Open Records Act, namely exposing agency action to public scrutiny, then countervailing interests, such as privacy, must prevail.”<sup>5</sup>

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<sup>2</sup> *Zink v. Department of Workers’ Claims, Labor Cabinet*, 902 S.W.2d 825, 828 (Ky. Ct. App. 1994).

<sup>3</sup> *See, e.g., Application of Auxier Road Gas Co., Inc. for an Adjustment in Rates and Certain Nonrecurring Charges*, Case No. 2008-00156 (Ky. PSC Mar. 6, 2009) (holding health insurance plan subscriber numbers should be afforded confidential treatment).

<sup>4</sup> *Id.* at 828-829.

<sup>5</sup> *In re: James L. Thomerson/Fayette County Schools*, KY OAG 96-ORD-232 (Nov. 1, 1996) (citing *Zink v. Department of Workers’ Claims, Labor Cabinet*, 902 S.W.2d 825 (Ky. Ct. App. 1994)) (emphasis added).

5. Protecting the employee's identity from public disclosure will not adversely affect the public's right to know. The redacted invoice provides all other pertinent information regarding the health and dental insurance policies that Mountain District has retained for its employees. Redacting the employee names, however, will prevent any specific information from being associated with a specific employee of Mountain District.

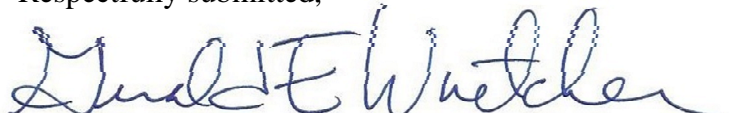
6. The information for which Mountain District is seeking confidential treatment is not known outside of Mountain District, and it is not disseminated within Mountain District except to those employees with a legitimate business need to know the information.

7. If the Commission disagrees with this request for confidential protection, however, it must hold an evidentiary hearing (a) to protect Mountain District's due process rights and (b) to supply with the Commission with a complete record to enable it to reach a decision with regard to this matter.<sup>6</sup>

**WHEREFORE**, Mountain District respectfully requests that the Commission grant confidential protection for the information described herein.

Dated: August 25, 2023

Respectfully submitted,



Gerald E. Wuetcher  
Stoll Keenon Ogden PLLC  
300 West Vine St. Suite 2100  
Lexington, Kentucky 40507-1801  
Telephone: (859) 231-3017  
Fax: (859) 259-3517  
gerald.wuetcher@skofirm.com

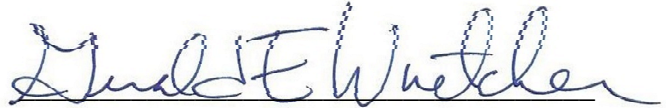
*Counsel for Mountain Water District*

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<sup>6</sup> *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 592-94 (Ky. App. 1982).

**CERTIFICATE OF SERVICE**

In accordance with 807 KAR 5:001, Section 8, and the Public Service Commission's Order of July 22, 2021 in Case No. 2020-00085, I certify that this document was transmitted to the Public Service Commission on August 25, 2023 and that there is currently no party that the Public Service Commission has excused from participation by electronic means in this proceeding.

A handwritten signature in blue ink that reads "Gerald E. Wuetcher". The signature is written in a cursive style with a horizontal line underneath the name.

Gerald E. Wuetcher