

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION BY WATER SERVICE)
CORPORATION OF KENTUCKY,)
ALONG WITH CORIX)
INFRASTRUCTURE (US) INC. AND)
SW MERGER ACQUISITION CORP.,)
FOR APPROVAL OF TRANSFER OF)
CONTROL AND ESTABLISHMENT)
OF A REGULATORY ASSET)

Case No. 2022-00396

PETITION FOR CONFIDENTIAL TREATMENT

Water Service Corporation of Kentucky (“WSCK”), Corix Infrastructure (US), Inc., and SW Merger Acquisition Corp. (collectively, “Joint Applicants”), by counsel jointly move the Public Service Commission of Kentucky (the “Commission”) pursuant to 807 KAR 5:001, Section 13(2) and KRS 61.878(1)(c) for an Order granting confidential treatment to certain information being provided as a supplemental response to the Commission’s First Request for Information.

Standard of Review

Administrative Regulation 807 KAR 5:110, Section 5 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 “each basis upon which the petitioner believes the material should be classified as confidential” in accordance with the Kentucky Open Records Act, KRS 61.878. 807 KAR 5:110 Section 5(2)(a)(1).

The Kentucky Open Records Act exempts certain records from the requirement of public inspection. *See* KRS 61.878. Specifically, KRS 61.878(1)©(1) exempts from disclosure the following:

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). One “obvious disadvantage” is created when proprietary information is disclosed “without the hurdles systematically associated with acquisition of such information about privately owned organizations.” See *Marina Management Service, Inc. v. Commonwealth of Ky., Cabinet for Tourism*, 906 S.W.2d 318, 319 (Ky. 1995). The information and documents referenced below are all highly sensitive confidential and proprietary information that the Joint Applicants do not otherwise disclose, and the disclosure of which would cause substantial injury to the Joint Applicants’ competitive position.

Item 9 of the First Request for Information seeks information related to transaction costs attributable to the Proposed Transaction. The Joint Applicants’ original response filed on January 12, 2023, sought confidential treatment for the estimated transaction costs. The same rationale applies to the supplemental response that identifies actual transaction costs through December 31, 2022. Notably, the Joint Applicants treat transaction costs as confidential and do not publicly disclose such costs in the ordinary course of business. Disclosure of this information would provide an advantage to the Joint Applicants’ competitors, who would benefit from knowledge of estimated and actual transaction costs without the hurdles systematically associated with acquisition of such information about privately owned organizations. Accordingly, the Joint

Applicants request confidential treatment for the transaction costs identified in response to Item 9 of the First Request for Information.

For the foregoing reasons, the Joint Applicants respectfully request confidential treatment in perpetuity of the information described above. If the Commission disagrees with this request for confidential protection, it must hold an evidentiary hearing (a) to protect the Joint Applicants' due process rights and (b) to supply the Commission with a complete record to enable it to reach a decision about this matter.

Respectfully submitted,

/s/ M. Todd Osterloh
STURGILL, TURNER, BARKER & MOLONEY, PLLC
M. TODD OSTERLOH
JAMES W. GARDNER
REBECCA C. PRICE
333 West Vine Street, Suite 1500
Lexington, KY 40507
Telephone No. (859) 255-8581
Fax No. (859) 231-0851
tosterloh@sturgillturner.com
jgardner@sturgillturner.com
rprice@sturgillturner.com
*Counsel for Water Service Corporation of Kentucky and
Corix Infrastructure (US) Inc.*

and

/s/ Valerie T. Herring
TAFT STETTINIUS & HOLLISTER LLP
Valerie T. Herring
2200 IDS Center
80 South 8th Street
Minneapolis, Minnesota 55402
2157 Telephone No.:
612.977.8400
Fax No.: 612.977.8650
VHerring@Taftlaw.com
*Attorney for SW Merger
Acquisition Corp*